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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~352~~. 73

JOSEPH H. ADAMS, JR., AND JOHN A. APPLETON, APPELLANTS,

vs.

ADDIE D. ADAMS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 9, 1872.

SUPREME COURT OF THE UNITED STATES.

No. 352.

JOSEPH H. ADAMS, JR., AND JOHN A. APPLETON, APPELLANTS,

vs.

ADDIE D. ADAMS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Bill of complaint	3	1
Exhibit A. D. A., No. 1, to	11	3
Summons to answer	19	6
Restraining order on	20	6
Affidavits in support of	21	7
Answer of defendant Adams to	27	8
Answer of defendant Appleton to	35	11
Stipulation to dissolve injunction	37	12
Replication	38	12
Decree for dissolution of injunction	39	12
DEPOSITIONS FOR COMPLAINANT.		
Deposition of Thomas Cooper De Leon	42	13
Edwin De Leon and exhibits	53	17
Addie D. Adams	84	26
Agnes De Leon	106	32
Exhibit A. D. A., No. 1	116	35
Order for hearing	123	37
Decree	124	37
Proceedings in general term and decree	127	38
Appeal to Supreme Court of the United States	128	39
Appeal bond to Supreme Court of the United States	129	39
Clerk's certificate	130	39

3 *Bill of complaint.—Filed Dec. 20, 1871.*

In the supreme court of the District of Columbia, the 20th day of December, 1871.

BETWEEN ADDIE D. ADAMS, PLAINTIFF, *and* JOSEPH H. ADAMS, JR., AND JOHN A. APPLETON, DEFENDANTS. } 2618. Equity docket, 11.

To the supreme court of the District of Columbia, holding an equity court for said district.

The plaintiff complains as follows:

First. The plaintiff is a citizen of the State of Massachusetts, and sues herein in her own right.

Second. The above-named defendant, Joseph H. Adams, jr., who is sued herein in his own right, is a citizen of the District aforesaid, and the above-named defendant John A. Appleton, who is sued herein as trustee, is a citizen of the State of New York.

Third. The plaintiff intermarried with the said defendant Adams on or about the the 29th day of September, 1859.

4 Fourth. On the 13th day of June, 1858, the said defendant Adams became the purchaser and owner in fee simple of a certain lot of ground, with the buildings and improvements thereon, situate and lying in the city of Washington and District of Columbia, and being that part of square numbered two hundred and fifty-one in the said city, which is bounded as follows: Beginning for the same at a point on the south line of said square, distant forth-seven feet and six inches from the southwest corner of said square, and running thence in a northeasterly direction with the line of New York avenue twenty-five feet; thence in a northwesterly direction with a line drawn at right angles to said avenue forty-eight feet and two inches; thence north eighty-three feet and nine inches to the north line of said square; thence with said north line twenty-three feet and seven inches; thence south ninety-two feet and two inches, and thence with a line drawn at right angles to said New York avenue fifty feet to the place of beginning, the said part of square being known and desig-

5 nated as lot numbered six (6) of Davidson's subdivision of said square, and having been conveyed, with the buildings and improvements theron, to the said defendant Adams by the devisees of one James Larned, deceased, and others, as will more fully appear (reference thereto being had) by a certain indenture, dated on the day and year last above written, and duly recorded in liber fol. the same being one of the land-records for the county of Washington, in the District aforesaid.

Fifth. On the 15th day of July, 1859, and for the purpose of securing payment to the grantors in said indenture of the purchase-money, (the amount whereof was evidenced by certain promissory notes made by the said defendant Adams,) in consideration whereof, the said lot of ground was sold and conveyed as aforesaid, the said defendant Adams, in conjunction with the plaintiff, his then wife, executed and delivered his certain deed of trust, only recorded in liber J. A. S., No. 178, fol. 399, et seq., one of the land-records of county and District aforesaid, whereby the said lot of ground was conveyed to William J. Stone, now deceased.

Sixth. That the said purchase-money, the amount whereof was

6 endorsed as aforesaid, was fully and completely discharged by payment according to their respective tenors and effects of the said promissory notes secured as aforesaid, by the said defendant Adams, prior to the 13th of August, 1861.

Seventh. That on the day and and year above written a certain indenture was made and entered into by and between the said defendant Adams and the plaintiff, his then wife, parties thereto of the first part, and said William J. Stone, as trustee aforesaid, party thereto, of the second part, and the said defendant Appleton, (who was a near friend and relation of said defendant Adams,) party of the third part, (and was confirmed, by his signature thereto, by one J. G. McGuire, who, as the lawful holder of said promissory notes secured as aforesaid, had previously received payment of the same in full,) whereby the said lot of ground, with the buildings thereon, and the privileges and appurtenances thereto belonging, was conveyed to the said defendant Appleton in fee, but in trust nevertheless, for the sole and separate use of the plaintiff during the term of her natural life, and to suffer and permit her during such term to use, pos-
7 sess, and enjoy the said premises, and to rent out the same from time to time, and to receive the rents and profits thereof to her own use, in the same manner as she might or could have done as a fem'e sole, with full power to the said defendant Appleton, as trustee aforesaid, at and upon the request of the plaintiff, to sell and convey said premises in fee simple, and pay over the proceeds of such sale to the plaintiff, or to such person as she might direct or appoint, all of which will more fully appear by refernce to a copy of said indenture, (the original whereof is duly recorded in liber J. A. S., No. 213, at folio 352, et seq., the same being one of the land-records for the county and District aforesaid,) herewith filed, marked Exhibit A, D, A, No. 1, and prayed to be taken as a part of their bill; and that the said original indenture, after being duly signed, sealed, acknowledged, and delivered by the parties thereto, was so recorded at the exclusive expense and express instance and request of the said defendant Adams, who afterwards, as the friend of the plaintiff and the agent of the said defendant Appleton, obtained possession of the said original indenture, which is still in his custody or under his control.

8 Eighth. On the 13th day of September, 1870, by a decree of the supreme judicial court of the State of Massachusetts, rendered in a certain cause therein depending, and to which the plaintiff and the said defendant Adams were parties respectively, (a copy of the record of which said plaintiff is ready to produce in evidence,) the plaintiff was divorced from the bonds of matrimony with the said defendant Adams, but by said decree there was neither sought nor made any provision for the plaintiff's alimony, the plaintiff relying and depending for maintenance and support upon the rights under indenture in the seventh paragraph of the plaintiff's bill referred to.

Ninth. Upon the execution and delivery of the said indenture making the said defendant Appleton her trustee, the plaintiff, as far as she could, accepted, and in like manner has since continued to accept, the benefits designed to be conferred upon her by virtue of the trusts in said indenture expressed.

Tenth. The said defendant Appleton now declines and refuses to act as trustee under the said indenture bearing date the 13th of August, 1861, or to aid or assist the plaintiff in any manner about the said
9 real estate, and even refuses to permit his name to be used in a suit at law to obtain possession of the said property from the said

defendant Adams, who, from the 13th day of August, 1861, hath been and is now in possession of the same, and is now receiving the rents and profits thereof to his own exclusive use and behoof, refusing to deliver the said property, or to account for the rents and profits thereof to the plaintiff, or to any one as her trustee or agent, or to acknowledge her rights in the premises in any manner whatever.

The plaintiff therefore prays as follows:

1. That the rights of the plaintiff under the said indenture, of date the 13th day of August, 1861, may be declared and established by a decree of this court.

2. That the said defendant Adams may be compelled to deliver up to the plaintiff the said indenture last above mentioned.

3. That the said defendant Appleton may be removed from his said position as trustee under said indenture, and some suitable person appointed to execute the trusts thereof in his stead.

4. That the said defendant Adams may be required to deliver
10 up the possession of the said premises, and to render an account of the rents, issues, and profits thereof, from the 13th day of August, 1861, to the plaintiff, or to her new trustee to be appointed by the court.

5. That the said defendants, their servants and agents, may be restrained by injunction from collecting the rents and profits of the said estate, or from therewith interfering in any manner whatever.

6. That a receiver may be appointed to receive the rents and profits of the said real estate accruing during the pendency of this suit, and that the same, or a reasonable allowance out of the same, may be assigned to the plaintiff for her maintenance pendente lite.

7. That for the purposes aforesaid all necessary accounts may be taken, inquiries made, and direction given, and,

8. That the plaintiff may have such other and further relief as the nature of her case may require.

The defendants to this bill are Joseph H. Adams, jr., and John A. Appleton.

ADDIE D. ADAMS.

11 I do solemnly swear that I have read over the above bill by me subscribed, and know the contents thereof; that the facts therein stated upon my own knowledge are true, and the facts therein stated upon my information and belief I believe to be true.

ADDIE D. ADAMS.

Sworn and subscribed before me this 20th day of December, 1871.

N. CALLAN,
Notary Public.

W. W. BOYCE,
JOHN SELDEN,
Solicitors for the Plaintiff.

Exhibit to bill "A. D. A. No. 1."

Joseph H. Adams et al. to John A. Appleton, jr. Trust. Recorded 31 October, 1861.

This indenture, made this thirteenth day of August, in the year one thousand eight hundred and sixty-one, between Joseph H. Adams, jr., and Adeline D. Adams, his wife, of the city of Washington, Dis-

12 trict of Columbia, of the first part, William J. Stone, jr., of the same place, of the second part, and John A. Appleton, of the city of New York, State of New York, of the third part. Whereas said parties of the first part, by their deed bearing date July 15, A. D. 1859, and recorded in liber J. A. S., No. 178, fol. 399 et seq., one of the land-records of Washington County, in said District, conveyed the parcel of land and premises hereinafter particularly described to said party of the second part, in trust, to secure the payment of certain promissory notes therein particularly described. And whereas said promissory notes have been fully paid and satisfied, as is evidenced by the hand and seal of James C. McGuire, the holder thereof, when the same were paid and satisfied, hereto set and affixed; and whereas said parties of the first part have agreed to convey said premises to said party of the third part upon the trusts hereinafter set forth: now this indenture witnesseth that said parties of the first part and said party of the second part, for and in consideration of the premises, and the sum of five dollars
13 to each of them in hand paid by the said party of the third part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents do grant, bargain, and sell, alien, enfeoff, release, convey, and confirm unto the said party of the third part, his heirs and assigns, all that certain parcel of land situate and lying in the city of Washington, District of Columbia, and being that part of square numbered two hundred and fifty-one, (No. 251,) as the same is designated and described on the plats and plans of said city, contained within the following metes and bounds: Beginning for the same at a point in the north line of said square, distant forty-seven feet six inches from the southwest corner thereof, and running thence in a northeasterly direction with the line of New York avenue twenty-five feet; thence in a northwesterly direction with a line drawn at right angles to said avenue forty-eight feet two inches; thence north eighty-three feet nine inches to the
14 north line of said square; thence west with said north line twenty-three feet seven inches; thence south ninety-two feet two inches, and thence with a line drawn at right angles to New York avenue fifty feet to the place of beginning, the same being lot numbered six (6) of Davidson's subdivision of said square, with the buildings, rights, privileges, and appurtenances thereunto belonging, as in anywise appertaining, and all the estate, right, title, interest, claim, and demand whatsoever, whether at law as in equity, of the said parties of the first part and of the said party of the second part, under and by virtue of the deed of trust aforesaid, of, in, and to the same, to have and to hold the said parcel of land and premises, with appurtenances, unto the said party of the third part, his heirs and assigns, for his and their use, in trust nevertheless for the following uses and purposes, and none others: In trust for the sole and separate use of Adaline A. Adams, wife of Joseph H. Adams, jr., for and during her natural life, free and clear of any right, claim, or demand therein and thereto,
15 as to the rents and profits thereof, on the part of her present or any future husband and their creditors, and to suffer and permit the said Adaline D. Adams, for and during her natural life, to use, possess, and enjoy said premises, and to rent out the same from time to time and receive the rents and profits thereof to her own use in the same manner as she might or could do if she was a feme sole, with full power to said party of the third part, on the request of the said Adaline D. Adams, to sell and convey said premises in fee simple, and pay

over the proceeds of such sale to said Adaline D. Adams, or to such person or persons as she might direct and appoint, and from and after the death of said Adaline D. Adams, no sale having been made under the power aforesaid, in trust for the children of said Adaline D. Adams and Joseph H. Adams, jr., and their heirs as tenants in common; and if said Adaline D. Adams shall die without leaving any issue of her marriage with said Joseph H. Adams, jr., surviving her, then in trust for said Joseph A. Adams, jr., his heirs and assigns.

16 In testimony whereof the said parties of the first part and said party of the second part have hereto respectively set their hands and affixed their seals on the day and year first hereinbefore mentioned.

JOSEPH H. ADAMS. [SEAL.]
ADALINE D. ADAMS. [SEAL.]
WM. J. STONE, JR., *Trustee.* [SEAL.]
J. C. McGUIRE. [SEAL.]

Signed, sealed, and delivered in the presence of—
THOS. J. FISHER.
N. CALLAN.

Signed, sealed, and delivered in the presence of (as to W. J. Stone, jr.)—
THOS. J. FISHER,
F. J. MURPHEY.

DISTRICT OF COLUMBIA,
Washington County, to wit:

We, Thos. J. Fisher and F. J. Murphy, justices of the peace in and for the county of Washington aforesaid, in the District of Columbia, do hereby certify that Wm. J. Stone, jr., a party to a certain deed bearing date on the 13th day of August, A. D. 1861, and hereto annexed, personally appeared before us, in our county aforesaid, the said William J. Stone, jr., being personally well known to us as the person
17 who executed said deed, and acknowledged the same to be his act and deed.

Given under our hands and seals this 13th day of August, A. D. 1861.

THOS. J. FISHER, *J. P.* [SEAL.]
F. J. MURPHEY, *J. P.* [SEAL.]

DISTRICT OF COLUMBIA,
Washington County, to wit:

We, Thos. J. Fisher and Nich's Callan, justices of the peace in and for the county of Washington aforesaid, in the District of Columbia, do hereby certify that Joseph H. Adams, jr., a party to a certain deed bearing date on the 13th day of August, A. D. 1861, and hereto annexed, personally appeared before us, in our county aforesaid, the said Joseph H. Adams, jr., being personally well known to us as the person who executed said deed, and acknowledged the same to be his act and deed.

Given under our hands and seals this 16th day of October, A. D. 1861.

THOS. J. FISHER, *J. P.* [SEAL.]
N. CALLAN, *J. P.* [SEAL.]

18 DISTRICT OF COLUMBIA,
Washington County, to wit:

We, Tho's J. Fisher and N. Callan, justice' of the peace in and for the

county of Washington aforesaid, in the District of Columbia, do hereby certify that Adaline D. Adams, the wife of Joseph H. Adams, jun., a party to a certain deed, bearing date on the thirteenth day of August, A. D. 1861, and hereto annexed, personally appeared before us, in our county aforesaid, the said Adaline D. Adams, being personally well known to us as the person who executed said deed, and being by us examined privily, and apart from her said husband, and having the deed aforesaid fully explained to her, the said Adaline D. Adams acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this sixteenth day of October, A. D. 1861.

THO'S J. FISHER, *J. P.* [SEAL.]
N. CALLAN, *J. P.* [SEAL.]

19 *Summons to answer.—Issued Dec'r 20th*, 1871.

In the supreme court of the District of Columbia, Dec'r 20th, 1871.

ADDIE D. ADAMS, COMPLAINANT,
vs.
J. H. ADAMS, JR., ET AL., DEFENDANTS. } 2618. Equity docket.

To Joseph H. Adams, jr., an' John A. Appleton, defendants:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

Memorandum.—That the defendants are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable, otherwise the bill may be taken as confessed.

20 *Restraining order.—Issued Dec'r 20th*, 1872.

An original bill, praying an injunction to restrain defendants from collecting the rents and profits of the real estate in the bill mentioned, or from interfering with same, is this day filed. Hearing is fixed for Tuesday, January 2nd, 1872, at 11 o'clock a. m. Until further order you are hereby restrained as prayed.

By order of the court.

ANDREW WYLIE, *Justice, &c.*

Marshal's return.

Summoned J. H. Adams, and served notice for injunction on same.

A. SHARP, *Marshal.*

DEC'R 20TH, 1871.

21 *Affidavit in support of bill.—Filed Feb'y 12*, 1872.

CITY OF WASHINGTON,
District of Columbia, ss:

This 21st day of December, 1871, before me, the subscriber, a notary public in and for the city and District aforesaid, personally appeared

Agnes DeLeon, and, being first duly sworn, deposes and says that affiant has heard read over the bill in equity filed in a certain cause depending on the equity side of the supreme court of the District aforesaid, wherein Addie D. Adams is complainant, and Joseph H. Adams, jr., and John A. Appleton are defendants, numbered , and that affiant knows of her own knowledge that the facts therein stated are true in all particulars. Affiant further states that the said indenture, bearing date the 13th day of August, 1861, and in said bill more particularly described, was made and executed for the sole and only object of securing to the said Addie D. Adams and her children a provision and means of
22 support against unforeseen accident and contingencies; that prior to the execution of said deed, and at the time that said Joseph H. Adams, jr., became the purchaser of said property, he expressly declared that he became such purchaser for the purpose and with the object of settling such property upon the said Addie D. Adams his then wife; that at the time of the execution and making of such deed the said Joseph H. Adams, jr., expressly declared that such deed was so executed for the purpose of making a settlement of the said property upon the said Addie D. Adams, his then wife, and that since the execution of such deed the said Joseph H. Adams, jr., has always, up to about years ago, when affiant, for the last time, conversed with said Joseph H. Adams, jr., treated and admitted the said property as that of his wife, under and by virtue of the said deed of trust; and that affiant is the sister of said Addie D. Adams.

AGNES DE LEON.

Sworn and subscribed before me this 25th day of December, A. D. 1871.

N. CALLAN, *Notary Public.*

23 At the same time, before the said notary public, personally appeared Maria De Leon, and, being duly sworn, deposes and says that she has heard read over the foregoing affidavit, and knows the truth of the facts therein stated; that she has also heard read over the bill of complaint in said affidavit referred to, and knows the truth of the facts in said bill alleged, and that she adopts said affidavit as her own, and deposes to the truth of the facts therein stated.

MARIA L. DE LEON.

Sworn and subscribed before me this 21 day of December, A. D. 1871.
[SEAL.]
N. CALLAN,
Notary Public.

Affidavit in support of motion for receiver.—Filed Feb'y 12, 1872.

CITY OF WASHINGTON,
District of Columbia, ss:

24 This 30th day of January, 1872, before me, the subscriber, a notary public in and for the city and District aforesaid, personally appeared Addie D. Adams and Agnes De Leon, who, being first duly sworn, severally depose and say as follows: That affiants have heard read over the bill of complaint filed in the cause of Addie D. Adams v. Joseph H. Adams, jr., and John A. Appleton, now pending in the equity side of the supreme court of the District of Columbia, and are informed and well believe that an injunction has been granted in said cause restraining and prohibiting the defendants therein from receiving or col-

lecting the rents and profits of the real estate therein mentioned. Affiants are further informed and well believe that the said injunction is now in full force and virtue. Affiants further state that they are well acquainted with the present situation of said real estate, that the same has been demised upon a tenancy from month to month by the said Joseph H. Adams, Jr., to one Mr. Corey, for $125 per month, the said
25 Joseph H. Adams to himself reserving one of the rooms in the dwelling located and being upon the said real estate; that said Corey is now, under such demise, and for some time last past has been, in possession of the said real estate with the improvements thereon; that under said demise there is due by the said Corey for the use and occupation of the said premises for the month of December, 1871, the sum of $125, and that said sum of money has not been paid to any one whatever, but is now owing by the said Corey; that for the present month of January, 1872, there will soon be due and payable, in like manner, the further sum of $125; that no security has been taken of the said Corey for the payment of the rent due or to become due for the use and occupation of the said premises; that the said Corey has scarcely any property upon or within the said premises to which any lien in favor of his landlord or otherwise can attach at law or in equity; that the said Corey has converted the said dwelling into a lodging-house;
26 that affiants are informed and believe that said Corey is a clerk in the office of the 6th Auditor, and that beyond his income as such clerk, and the revenue derived from the use of said premises as a lodging-house aforesaid, the said Corey is without the means of paying the rent reserved upon his use and occupation of the said premises. Affiants further state that the rent due, and that which is to become due from the said Corey by reason of his possession of the said premises, is very imperfectly secured, and that unless some steps are taken by the honorable court in which said cause is pending for the better security of said rent, the party or parties who are or may be in equity entitled to said rent will be, and are now, in imminent danger of losing said rents entirely.

ADDIE D. ADAMS.
AGNES DE LEON.

Sworn and subscribed before me this 29th day of January, A. D. 1872.
[SEAL.] N. CALLAN,
Notary Public.

27 *Answer of def't Adams.—Filed Feb.* 16, 1872.

In the supreme court of the District of Columbia, the 16th day of February, A. D. 1872.

ADDIE D. ADAMS, PLAINTIFF,
vs.
JOSEPH H. ADAMS, JOHN A. APPLETON, DEFENDANTS.
} In equity. 2618. Dock. 11.

The separate answer of the above-named def't Adams to the bill of complaint of the above-named plaintiff.

In answer to the said bill of complaint I say as follows:

First. I admit the residence of the parties as is alleged in said bill of complaint.

Second. I admit I was married to the plaintiff.

Third. Within this district on the 29th day of September, 1852, but not, as alleged in said bill, in 1859.

Fourth. That on or about the 13th day of June, A. D. 1859, (but not in 1858, as is alleged in said bill,) I purchased and became the owner of the premises as described in the plaintiff's bill of complaint.

28 Fifth. I admit, on or about the 15th day of July, A. D. 1859, for the purpose of securing the payment of the residue of the purchase-money, I conveyed said described premises to William J. Stone, jr., (then in full life, but since deceased,) in trust, and that the plaintiff joined in said conveyance. The whole consideration was paid by myself, from my own individual funds, the plaintiff having no interest therein but such as might grow out of her marital rights.

Sixth. I admit the purchase-money was paid as aforesaid, prior to the 13th day of August, 1861.

Seventh. And in further answer to the seventh allegation of the plaintiff's bill of complaint, I deny that the same is true in manner and form as stated. But I admit that a certain indenture was made, but it never was executed and delivered to the said Appleton, or to any other person in his behalf, or to his use, either by myself or by any person whatever; that I never at any time intended to deliver said deed

29 so as to render it valid and effectual in law, but designedly retained said deed in my own possession without any delivery whatever.

This defendant admits that he placed said deed on record in the registry of deeds of the county of Washington, and it never has been out of his possession except for the time it was necessary to be recorded.

This respondent admits and avers the fact to be that, after the payment of the purchase-money as aforesaid, and not wishing the title to remain longer in said Stone, and owing to the disturbed and revolutionary character of the times and the threatened condition of this city, and other contingencies growing out of the state of war then existing, he caused said deed to be made and partially executed, so that upon short notice he could deliver it and make it effectual, or make such other changes of the title as he might think proper growing out of any changed circumstances, retaining, in the mean time, the future control of the title to the same; that said deed was not delivered to his then

30 wife, nor did he intend to make it a settlement upon her; that he has kept and maintained possession of the premises, making, in the mean time, extensive repairs and improvements upon the property, paying the taxes and insurance, and collecting the rents issuing from the same, and he most emphatically denies the existence of any such trust as the plaintiff, in her bill of complaint, alleges to exist and seeks the aid of this court to enforce.

Eighth. I admit the plaintiff, on or about the 13th day of September, A. D. 1870, in the State of Massachusetts, obtained from the courts of that State a decree of divorce of the bonds of matrimony from this respondent, with no other condition attached than that the plaintiff was to have the future custody of their two children, a daughter now about eighteen years of age and a son now about fourteen years of age. That this respondent is advised as a matter of law that said decree was not obtained in accordance with the laws of Massachusetts; that said plaintiff, in her application for a divorce, made no application for

31 the allowance to her of alimony, nor did she allege, as an excuse therefor, that she held any estate or interest in trust for her own support and maintenance; that this respondent, prior to the said decree,

had always made ample provision for the support of his wife and children, and has continued to make such provision since said decree up to such time as the plaintiff has attempted to set up and enforce her supposed or alleged right to the house and lot in the city of Washington.

That, if said decree is legal and valid by the laws of the State of Massachusetts, this respondent is advised and believes that the plaintiff may enforce her rights to alimony in the courts of Massachusetts, at any future time, at her will and pleasure.

And this respondent, further answering, denies the allegation of the plaintiff, in her bill of complaint made, that in procuring her decree of divorce "there was neither sought or made any provision for the
32 plaintiff's alimony, because she, the defendant, was relying and depending for her support and maintenance upon her supposed or assumed rights under the indenture described in the seventh paragraph of said bill of complaint;" and this respondent is confirmed in his denial of said allegation by the fact that she made no such allegation in her petition for divorce, and especially from the fact that soon after obtaining the decree of divorce, through the intervention of a Mr. Edwin De Leon, her brother, in the month of October, 1870, it was mutually agreed between the plaintiff and this defendant that he should pay for the future support of the plaintiff and their children, monthly, the sum of one hundred and thirty-five dollars from November to June, and one hundred dollars per month for the remaining months of the year; that the agreement and payment were made to prevent any further or future litigation. That the respondent, in execution of said agreement, did pay, and has continued to pay, said sum monthly, and would have con-
33 tinued to pay it but for the fact that the plaintiff has since sought and is seeking to break up said arrangement made as aforesaid, through the intervention and advice and consent of her brother, and is now seeking to get possession and control of the premises described in her said bill; and this respondent admits that he has not paid said sum since December, 1871, when she commenced proceedings against him. And this respondent further alleges that the sum he so agreed to pay, and which was paid, was a fair and just contribution out of his means and earnings towards the support of the defendant and children; that for his children he has a strong attachment, and has made, and shall continue to make, all necessary contributions for their support and education, in proportion to his means and ability, independent of any and all legal obligations that may be imposed upon him.

Ninth. And this defendant denies that the plaintiff has, in any way or manner, accepted the benefits of said supposed trust save that
34 she is now endeavoring to establish and enforce it through the intervention of this honorable court.

Tenth. That this defendant admits that said Appleton declines to hold said supposed or alleged trust, or to act under it, or to claim any title to the premises under said supposed deed, for the reasons hereinbefore set forth, that said deed was never executed and delivered so as to make it a valid or existing deed of trust.

And this defendant, having fully answered all of the allegations in said complainant's bill of complaint that he is advised are material for him to make answer unto, further saith that this honorable court ought not to enforce a trust which never was created and executed, and therefore prays to be discharged with his reasonable costs.

JOS. H. ADAMS.

Witness:

GEO. W. BOGG.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Sworn to and subscribed before me, a notary public in and for the District & county aforesaid, on the sixteenth day of February, A. D. 1872.

[SEAL.] GEORGE W. BOGG,
Notary Public.

35 *Answer of Deft. Appleton.—Filed Feb'y* 16, 1872.

Supreme court of the dist. of Col'a.

ADDIE D. ADAMS
vs.
JOSEPH H. ADAMS, J'R, & JOHN A. APPLETON. } In equity.

This respondent, John A. Appleton, in answer to the bill filed in this cause, says:

That this respondent has no knowledge, except from information, as to purchase of the real estate described in said bill by said defendant Adams, or when he purchased the same, nor of the said several deeds of trust, nor as to the other matters stated in said bill of complaint.

Respondent, further answering, says that if any deed was ever executed by the said Adams & wife, parties of the first part, William J. Stone, party of the second part, to this respondent as party of the third part, as stated in said bill of complaint, such deed was executed

36 without the knowledge or consent of this respondent, and that such deed was never delivered to this respondent, nor did this respondent ever accept such deed, or become a party to the same; nor did he accept the trust imposed by such deed, nor was this respondent informed of the existence of such deed until the year 1870. He was so informed by said complainant, whereupon respondent declined to act as trustee in the premises, or to accept such trust, even if he could have done so without delivery to him of the deed.

Respondent admits that the said complainant and defendant Adams were married, and, as he is informed & believes, the said complainant procured a decree of divorce from said defendant Adams in the courts of Massachusetts.

And having fully answered, respondent prays to be dismissed.

JOHN A. APPLETON,
By LANDER & MERRIMAN,
Solicitors.

STATE OF NEW YORK,
City & County of New York:

37 John A. Appleton, being duly sworn, deposes and says that the foregoing answer is true, except as matters therein stated *is true, except as matters therein stated* to be on information and belief, and as to those matters he believes it to be true.

JOHN A. APPLETON.

Subscribed & sworn to before me this 9th day of February, 1872.

[SEAL.] O. CALLAN,
Notary Public, N. Y. Co.

Stipulations of parties by their solicitors.—Filed Feb'y 16, 1872.

In the supreme court of the District of Columbia.

ADDIE D. ADAMS
vs.
JOSEPH H. ADAMS ET AL. } In equity.

It is agreed in this case as follows:

That the injunction granted in this case be dissolved, and the defendant Adams authorized to receive the rents of the house and
38 appurtenances mentioned in the pleadings, one-half of said rents to be paid over by said defendant Adams to said plaintiff, during the pendency of the litigation, and without prejudice to the rights of either party.

February 15th, 1872.

T. J. D. FULLER,
Att'y for Def't Adams.
W. W. BOYCE,
JOHN SELDEN,
Sol'rs for Pl'ff.

Replication.—Filed Feb'y 19, 1872.

In the supreme court of the District of Columbia, the 19th day of February, 1872.

ADDIE D. ADAMS, PL'FF,
vs.
JOSEPH H. ADAMS, J'R, AND JOHN A. APPLETON, def'ts. } In equity. No. 2618, docket 11.

The plaintiff hereby joins issue with the defendants.

W. W. BOYCE,
JOHN SELDEN,
Sol'rs for Pl'ff,

39 *Decree for dissolution of injunction, &c.—Filed Feb'y* 19, 1872.

In the supreme court of the District of Columbia, the 19th day of February, 1872.

ADDIE D. ADAMS, PL'FF,
vs.
JOSEPH H. ADAMS, J'R, ET AL., DEF'TS. } In equity. No. 2618.

With the consent of the plaintiff and of the said defendant Adams, according to the agreement of their respective solicitors, filed in the above-entitled cause, it is, this 19th day of February, 1872, ordered, adjudged, and decreed by the court that the temporary injunction heretofore granted in said cause be, and it is hereby, dissolved, and that the said defendant Adams be, and he is hereby, authorized to receive the rents and profits of the real estate mentioned in these proceedings during the pendency of the same. It is further ordered, adjudged, and decreed that the said defendant Adams pay over to the plaintiff the one-

half part of said rents and profits during the pendency of this litigation, but without prejudice to the rights of either party.

By the court.

A. WYLIE.

40 *Order authorizing J. J. Johnson, examiner, to take testimony.—Filed Mar. 4, 1872.*

In the supreme court of the District of Columbia, the 4th day of March, 1872.

ADDIE D. ADAMS, PL'FF,
vs.
JOSEPH H. ADAMS, J'R, ET AL., DEF'TS. } In equity, No. 2618.

On motion of the plaintiff, by Messrs. Boyce and Selden, her solicitors, it is, this 4th day of March, 1872, by the court ordered, adjudged, and decreed that J. J. Johnson, esquire, one of the examiners thereof, be, and he is hereby, authorized and empowered to take the testimony on behalf of the plaintiff in the cause above entitled.

By the court.

A. WYLIE.

Order extending time to take testimony.—Filed March 16th, 1872.

ADDIE D. ADAMS, PL'FF,
vs.
JOSEPH H. ADAMS, J'R, ET AL., DEF'TS. } 2618, in equity. Docket 11.

41 On motion of the plaintiff, by Mr. Selden, her solicitor, it is, this 16th day of March, 1872, by the court ordered, adjudged, and decreed that the time for taking the testimony on the above-entitled cause be, and the same is hereby, extended for the space of ten days over and above the time allowed for the taking of such testimony under the general rule of this court.

By the court.

A. WYLIE.

42 TESTIMONY ON BEHALF OF PLAINTIFF.

Deposition of Thomas Cooper De Leon.

In the supreme court of the District of Columbia, the 8th day of March, 1872.

ADDIE D. ADAMS
vs.
JOSEPH H. ADAMS, J'R, ET AL. } No. 2618. Equity. Docket 11.

The President of the United States to C. F. Moulton, Mobile, Alabama, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with power and authority, to examine such witnesses as may be brought before you as witnesses in the above-entitled cause upon the interrogatories annexed to this commission. And, therefore, you are hereby commanded, at a

certain day and place, or certain days and places to be appointed by you, to cause said witnesses to come before you, and then and there examine them on oath or affirmation upon the said interrogatories,
43 and reduce their testimony into writing, to be signed by said witnesses. And having so done, annex the same to this writ, closed up under your seal, and make return thereof into said court with all convenient speed.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

In the supreme court of the District of Columbia, the day of March, 1872.

ADDIE D. ADAMS
vs.
JOSEPH H. ADAMS, J'R, & JOHN APPLETON. } In equity. No. 2618.

Interrogatories to be propounded to Thomas Cooper De Leon, a witness residing in Mobile, Alabama, on behalf of the plaintiff.

Interrogatory 1. Are you acquainted with the parties to this suit?

44 Interrogatory 2. Did you ever hear the defendant, Joseph H. Adams, say anything about the title or ownership of a certain house & lot on New York avenue, near 14th street west, Washington City, D. C.? If so, state what he said, and when, and which house & lot was referred to.

Interrogatory 3. Did you ever have any conversation with the defendant, Joseph H. Adams, about any provision or disposition of property he had made for the benefit of his wife and children? If so, state the particulars thereof, and when.

Interrogatory 4. Do you know any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or to the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

W. W. BOYCE,
J. SELDEN,
Pl'ff's Sol'rs.

Cross-interrogatories, to be propounded to and answered by Thomas Cooper De Leon:

1st cross-interrogatory. If you answer in the affirmative to the pl'ff's 2d interrogatory, state when it was, where it was, and who was present at the conversation, and state all of the conversation of the def't at the time and place spoken.

2d cross-interrogatory. Did you leave Washington before the war, and were you again in Washington until after the war; and where is and has been your residence since April, 1861?

3d cross-interrogatory. Have you seen the def't since his wife obtained a divorce from him, or had any conversation with him since that time; and are you a brother of the pl'ff? Has she corresponded with

you, or talked with you, in relation to the deposition you may give in this suit?

T. J. D. FULLER, *for Def't.*

46 Answers to the direct and cross-interrogatories, propounded to Thomas Cooper De Leon, a witness on behalf of the plaintiff in a certain cause pending in the supreme court of the District of Columbia, wherein Addie D. Adams is complainant and Joseph H. Adams et al. are defendants:

Answer to first direct interrogatory. I am acquainted with the parties to this suit.

Ans. to 2d int'r. Yes; I have heard him speak of the title and ownership of the property mentioned, several times. He told me emphatically that the house and lot referred to was made over to the complainant as her property; and was done by him as a provision for the support of herself and children against accidents, he being on a salary in the Government employ. This was said by him first at Baltimore, M'd, in the spring or summer of A. D. 1865. He also said the
47 same to me in Roxbury, Massachusetts, and several times subsequently at the defendant's office, in the Patent Office, D. C.; and again, and the last time, in the fall of 1870.

Ans. to 3d direct int'r. I have answered this enquiry in my answer to int'r. 2d. But I will further state that I have often had conversations with the defendant Adams in relation to the possession and disposition of the property referred to. In Roxbury, Massachusetts, he had a conversation with me about the purchase of a house and lot in that village, when he stated that the plaintiff and her children were already provided for by the conveyance to her of the house and lot on New York avenue, Washington, D. C. This conversation took place at the time the defendant Adams and his family were residing in Roxbury, whilst I was there on a visit, in the fall, I think, of 1865; but I am not positive as to this latter date.

Ans. to int'r. 4th. In this conversation he was seemingly anxious to impress upon me that he had made this provision and conveyance to his wife as an evidence of his solicitude and disposition
48 of providing for her against future accidents; and he repeated to me that in this conveyance he had appointed or made John A. Appleton, of the firm of D. Appleton & Co., of New York, trustee of this property.

Answer to cross-interrogatories:

Answers to 1st cross-int's. I cannot state with more certainty, in answer to this interrogatory, than what I have in my answers to the second and third direct interrogatories. I have given the substance of those conversations as I remembered them. In the Roxbury conversations the plaintiff was present, and also my mother, since deceased. Adams, the defendant, said that he feared to buy the brick house in Roxbury, though he knew that he could clear a thousand dollars by a resale. I urged him then to buy and give a mortgage on the
49 house, if necessary, or buy and sell again, if necessary. He hesitated, and then replied that he would buy and hold the property himself, inasmuch as he had already made provisions for his wife and children by the conveyance of the Washington property as before mentioned.

2d cross-int's. He answers: I left Washington on the fourth day of

March, A. D. 1861. I was not in Washington again until after the war. At this time my residence is at Mobile, Alabama. Since 1861 I have resided in Richmond, V'a, Baltimore, M'd, and New York City.

Ans. to 3d cross-inter. I am not positive, but I think I saw the defendant Adams once since at No. 70 Fifth avenue, New York. I had no particular conversation with him, inasmuch as he called to see my elder brother and not myself. I am a brother of the plaintiff. The plaintiff wrote to me, informing me that Mrs. Boyce would send
50 interrogatories in her case for me to answer. This was all she wrote, except to add that she hoped I would be prompt in making my answers.

THOMAS COOPER DE LEON.

I, C. F. Moulton, commissioner within named, do hereby certify that in pursuance of the authority vested in me by virtue of the said commission issued to take the deposition of Thomas Cooper De Leon, a witness for the plaintiff in a certain cause pending in the supreme court of the District of Columbia, wherein Addie D. Adams is plaintiff and Joseph H. Adams et al. are defendants, that I caused said witness to come before me, at my office in the city of Mobile, on the 29th day of March, A. D. 1872; that I have personal knowledge of said witness; that said witness was by me first sworn to speak the truth; the said witness deposed to said answers, as therein set down by me, both
51 to the direct and cross-examination; that after said answer' had been so reduced to writing, they were by me read over to said witness, who approved of and subscribed to the same in my presence.

Witness my hand and seal this 29th day of March, A. D. 1872.

C. F. MOULTON, [SEAL.]
Commissioner.

52 In the supreme court of the District of Columbia, the 8th day of March, 1872.

ADDIE D. ADAMS
v.
JOSEPH H. ADAMS ET AL. } No. 2618. Equity docket, 11.

The President of the United States to Moses Greenfield, greeting:

Know ye, that in confidence of your prudence and fidelity you have been appointed, and by these presents you are invested with power and authority, to examine such witnesses as may be brought before you, as a witness in the above-entitled cause, upon the interrogatories annexed to this commission; and, therefore, you are hereby commanded, at a certain day and place, or certain days and places, to be appointed by you, to cause said witnesses to come before you, and then and there examine them, on oath or affirmation, upon the said interrogatories, and reduce their testimony into writing, to be signed by said witnesses; and, having so done, annex the same to this writ, closed up under
53 your seals, and make return thereof into said court with all convenient speed.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*
By L. P. WILLIAMS, *Ass't Clerk.*

Supreme court of the District of Columbia.

ADDIE D. ADAMS,
v.
JOSEPH H. ADAMS ET AL.

To the supreme court of the District of Columbia:

The undersigned, a commissioner appointed by your honorable court to examine Edwin De Leon, a witness in this cause, respectfully reports: That the witness attended before me at my office, No. 2 Nassau s't, in the city of New York, on this 25th day of March, 1872, and being sworn by me to tell the truth, the whole truth, and nothing but the truth, was examined by me on the interrogatories herewith returned, and that the answers of the said witness thereto are truly stated in the accompanying deposition, signed by him.

54 HENRY GREENFIELD,
Commissioner.

NEW YORK, *March 25th*, 1872.

I do further report that the within deposition, after having been mailed by me to the clerk of the supreme court of the District of Columbia, was returned to me, with the consent of W'm W. Boyce, esq., plaintiff's counsel to the cross-examination of Edwin De Leon, endorsed on the back of the envelope enclosing the same, and which is hereto annexed. And in pursuance of such consent the witness was cross-examined G. W. Tower, esq., counsel for the def't, Jos. H. Adams, and that the questions and answers in the cross-examination hereto annexed are truly stated therein, and the same was signed and sworn to by said Edwin De Leon.

HENRY GREENFIELD,
Commissioner.

NEW YORK, *March 25th*, 1872.

In the supreme court of the District of Columbia, the day of March, 1872.

55 ADDIE D. ADAMS
vs.
JOSEPH H. ADAMS, J'R, & JOHN APPLETON. } In equity, No. 2618.

Interrogatories to be propounded to Edwin De Leon, a witness residing in New York City, to be examined on behalf of the plaintiff.

Interrogatory 1. Are you acquainted with the parties to this suit?

Interrogatory 2. Did the defendant, Joseph H. Adams, some years ago apply to you for a loan of several thousand dollars? If so, state the circumstance under which the same occurred, and whether you loaned the money to him.

Interrogatory 3. After the divorce of the plaintiff from the defendant, Joseph H. Adams, j'r, did you make some arrangement with the defendant, Joseph H. Adams, j'r, for him to pay the plaintiff, Mrs. Adams, a monthly or quarterly sum of money for her support? If so, state the particulars.

56 Interrogatory 4. Do you know any other matter or thing which may be of benefit to the parties at issue in this cause, or either of

them, or that may be material to this, the subject of your examination, or to the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

W. W. BOYCE,
J. SELDEN,
Pl'ff's Solicitors.

Supreme court of the District of Columbia.

ADDIE D. ADAMS
v.
JOSEPH H. ADAMS ET AL.

Deposition of Edwin De Leon, a witness examined in this cause under a commission with interrogatories annexed, issued by the above-named court to Henry Greenfield, of the city of New York and State of New York.

The said Edwin De Leon, being duly sworn, makes answer to the several interrogatories propounded as aforesaid, in the following
57 words:

To the first interrogatory. I am, and have been for upwards of twenty years, acquainted with defendant. The plaintiff is my sister.

To the second. In 1852, towards the close of the year, defendant Adams married my sister, the plaintiff in this case. In July, 1853, I went abroad as consul-general to Egypt, remaining there eight years, never seeing Mr. Adams again until 1866, thirteen years afterwards. During my absence I was in the habit of remitting to Mr. Adams, from time to time, considerable sums of money for the support of my mother, and two other sisters residing sometimes with him and sometimes in other places. During that period, I think about 1856, Mr. Adams wrote me a letter stating that he desired to purchase a house, which would always be a home for his wife and children in case of anything happening to himself, and that all he needed was six thousand
58 dollars, cash payment, to secure one in every way suited to him.

In reply I enclosed him a bill of exchange for twelve hundred pounds sterling on London, requesting him to use it for that purpose, and stating that he might repay it at his convenience or wait until I asked him for it. I afterwards received letters from home, whether from Mr. Adams or others I cannot now positively say, stating that a deed of trust to my sister had conveyed that house to her and her children, so that his creditors could not touch it. My impression, however, is, that Mr. Adams wrote me to that effect himself. I never required from Mr. Adams either security, principal or interest, of this loan until after the war in 1865, when I asked him to make some small advances to my mother and sisters on account. When I returned, at the end of 1866, I asked for a settlement. He insisted on making that settlement in currency; and, on consulting a lawyer, I found it was a legal tender. He also charged me five per cent. commission for all the moneys which I had sent, and he disbursed, to my family during the thirteen years of my ab-
59 sence; which he deducted from the sum which he owed me. I remonstrated against this mode of settlement, but finally consented. He then stated that he was unable to pay the whole amount, but would pay it in instalments of about two hundred dollars or thereabouts to my sisters, which agreement I believe he has complied with. One of the chief reasons which induced me to be so patient, both in reclaiming the

principal and in submitting to the final settlement, was the belief that the house was the property of his wife and children.

To the third. I did. The circumstances were these: Mr. Adams came to me and also wrote and asked me to interpose so as to make some compromise between himself and my sister, who had obtained a divorce from him in Boston, in a Massachusetts court. He stated that he was willing to make a provision for his wife and the two children if she would fix a reasonable sum for their
60 maintenance. I replied it was a matter I knew nothing about, not even the proceedings. I then wrote my sister at Boston, who replied that she had obtained a divorce for cause; that she wanted nothing more to do with him; that she owned a house in Washington, and intended to institute legal proceedings to get possession of it. On communicating this reply to Mr. Adams, he still urged me to make a compromise, stating that he had a public office in Washington, and that a suit would be a scandal to him and to us, which he wanted to avoid. Desirous myself of avoiding the same publicity, I urged my sister to accept provisionally a fixed sum per month for the support of herself and children, which agreement was to continue so long as she refrained from instituting a suit for the recovery of the house under the trust-deed, which right she expressly reserved, as I also did in my conversation to Mr. Adams. The sum he was to pay her monthly was for the support of herself and two children, and was to be one hundred
61 and thirty dollars per month in winter and one hundred in summer, which was to be remitted through me regularly on or before the first of each month. For several months the remittances came regularly; then they ceased coming to me altogether, and I occasionally heard from my sister that they were sent in broken instalments. At last I ceased to hear at all from either party, and after an interval of several months my sister wrote that she had instituted proceedings to get possession of her house. Mr. Adams then wrote me again, and sent to me Mr. Spofford, of Boston, his lawyer, to try and patch up another arrangement, on the ground of his conveyance of the house being null and void, a me*ar* formula which he had gone through, and threatening also to reopen the proceeding for a divorce. Mr. Spofford intimated to me that if the legal proceedings were dropped he would be willing to surrender the house for the benefit of his wife and children. I attempted to open this negotiation, but Mr. Spofford having been set aside,
62 it fell to the ground, and I have had nothing further to do with it. I wish it to be distinctly understood that in all these negotiations in which I took part I never, directly or indirectly, doubted or waived my sister's right to reclaim that property whenever she chose to do so, nor was any such condition ever made by me in any of the arrangements contemplated. My purpose was simply to give time for an amicable arrangement which would put her in possession of that property, and so I always stated to Mr. Adams.

To the fourth. I think I have stated all the material facts within my knowledge.

EDWIN DE LEON.

Sworn to and subscribed before me this 25th day of March, 1872.
HENRY GREENFIELD, *Com.*

I certify to the correctness of the foregoing deposition.
HENRY GREENFIELD,
Commissioner.

NEW YORK, *March 25th*, 1872.

63 Cross-examination:

Question. You think about 1856 Mr. Adams wrote you a letter referring to the purchase of a house. Are you certain about the date, and can you produce the letter?

Answer. About the date and letter I cannot state positively. I am not certain whether I can produce the letter or not. I think I probably could.

Q. How long since you last read that letter, to your best recollection?

A. Not for several years; possibly within ten; will not swear that I have read it any later than that.

Q. Will you undertake to state all the contents of the letter now?

A. I certainly could not.

Q. In regard to the response you made to the letter, you state you wrote a letter to Mr. Adams. Have you any memorandum of the contents of that letter?

A. I think not. I wrote it immediately on the receipt of his.

64 Q. Do you remember whether or not you wrote this letter before the year 1859?

A. My impression is that it was much earlier.

Q. On what do you base your report of the contents of that letter?

A. On memory. I have a very vivid recollection of the main points of the letter.

Q. State the main points.

A. The main point of the letter was in reply to the suggestion that he could buy a house which would be a home for his wife and children if he could make a loan of $6,000. In reply to this letter I remitted a bill of exchange for £1,200 as a loan to him for that purpose, saying that he could pay it at his convenience, or when I applied for it.

Q. Is that all that you remember of the contents of the letter?

A. It is.

Q. Did you ever enquire as to what disposition was made of the money?

A. I cannot positively say that I did.

65 Q. Did you ever hear that your sister was receiving any benefits under the trust-deed to which you have referred in your answer to the second interrogatory?

A. I never did.

Q. When did you first hear of the trust-deed to which you have there referred?

A. I cannot posatively say.

Q. Did you ever hear of the trust-deed before 1870, at the time of the divorce?

A. Yes; in the beginning of 1867. That was the first I ever heard of it, to my recollection.

Q. What, if anything, did Mr. Adams do by way of acknowledging your draft for $6,000?

A. I remember that he acknowledged it, and bound himself to pay it, but in what shape I do not remember.

Q. Did he or not do this about the time of receiving the draft?

A. I presume he did.

Q. Did Mr. Adams or not give you a note for the full amount of the proceeds of the draft, or a note at any time on account of that draft?

66 A. I cannot positively state.

Q. Have you any recollection of ever having had in your pos'sion a note for $5,866$\frac{66}{100}$ made by Mr. Adams?

A. I don't recollect whether I ever received it or not.

Q. Look at that note and see whether you ever saw it before.

A. I cannot positively say; I don't remember whether I ever had this in my possession. The whole affair has passed out of my recollection.

(Note produced, and marked by commissioner.)

Q. Does the inspection of the note shown you, and particularly of its date, 1859, refresh your recollection in any respect as to the date of your transaction with Mr. Adams in regard to the £1,200?

A. It does not.

Q. Will you swear that you did not have this note in your possession about 1867, when you had a settlement with Mr. Adams?

A. I will not.

Q. How long after the transaction with Mr. Adams, in regard to the draft, did you have any report from home about the deed of trust?

A. That I cannot state. I heard of the conveyance of the house to Mrs. Adams.

Q. Who gave that information?

A. That I cannot state.

Q. Was the information communicated by letter?

A. The impression on my mind is that it was, but I will not swear positively.

Q. Do you remember any other information that was conveyed at the same time; and, if so, upon what subject?

A. I do not.

Q. Do you know when the deed which is referred to in the bill in this case is dated?

A. I do not. I never saw but what purported to be a copy of it.

Q. In whose possession did you first see that copy, when, and where?

68 A. A proper answer of that would be a copy was sent me by my sister to ask my opinion about it. The exact date when sent I cannot remember. It was sent to New York.

Q. About how long ago?

A. I suppose about two years ago. I did not think at the time that I should ever be questioned about it.

Q. From 1861 to 1866 where were you?

A. A part of the time in Paris, a part of the time in London and in other cities. I left Alexandria in 1861.

Q. Was not this transaction of £1,200 a loan to Mr. Adams upon his personal credit?

A. Most undoubtedly it was.

Q. After the loan, and before you came home in 1866, did you not request Mr. Adams to make certain payments to your mother and sisters on account of this loan?

A. Yes, I did.

Q. And he paid them, did he not?

A. Yes.

69 Q. Do you know how much he had paid on your request in this way up to the time of your first settlement with him in December, 1866?

A. I could not positively say without reference to papers.

Q. During the period of your absence from this country, from the first, in 1853, were you not in the habit of sending monies to Mr. Adams to be disbursed for your mother and sisters?

A. I was.

Q. Did this continue later than 1861, the outbreak of the war?

A. I think not.

Q. When did you first request Mr. Adams to *to* make payments to your mother and sisters, on account of the six thousand dollar loan to him?

A. About May, 1865.

Q. Did not Mr. Adams, on the accounting in December, 1866, and afterwards, pay you up this loan of $6,000, principal and interest?

A. He did, in instalments, pay the full amount, principal and interest.

Q. Upon that settlement about December, 1866, was anything said by Mr. Adams about this house, and what?

70 A. I have no recollection that we conversed on the subject?

Q. Do you remember any time after that conversing with him on the subject, and, if so, when, for the first time?

A. I think it was soon after the divorce.

Q. Was that or not the first time when the subject of the house was conversed upon between you and Mr. Adams?

A. I carefully avoided talking with him on his own affairs, and I think I never had.

Q. Did not Mr. Adams first seek you in regard to some arrangement after the divorce?

A. He first sought me about it. I think it was here in the city of New York.

Q. Did not Mr. Adams profess a willingness to provide liberally for his wife and children?

A. He did.

Q. Then, what, at this interview, did you and Mr. Adams say about that house?

A. We disagreed upon that point. He claimed it to be his, and I claimed that the trust-deed was valid.

71 Q. Did Mr. Adams ever at any time admit that the trust-deed was valid?

A. Not to me.

(Papers shown to witness were identified as being in his handwriting and marked by commissioner with his initials, H. G., Com.)

Q. You say you communicated to Mr. Adams a reply of Mrs. Adams to a letter of your own to her, in which she had told you of the divorce; that she owned the house in Washington, and intended to commence legal proceedings to get possession of it. Do you mean to say that you communicated all these points of her reply to Mr. Adams?

A. I am not certain that I did at that time communicate them all, but I did some time or other.

Q. When did you communicate to Mr. Adams first that Mrs. Adams claimed to own the house and intended to institute legal proceedings to obtain possession of it?

A. I cannot positively state.

72 Q. How many times since, after the divorce, did you personally see Mr. Adams in reference to an arrangement for maintenance for Mrs. Adams and children?

A. I think only twice.

Q. Was it at such a personal interview, or was it by letter, that you communicated this point of hers about the house?

A. I cannot positively say, but I think personally.

Q. When was an arrangement of some sort made between you and Mr. Adams with reference to an allowance?

A. I cannot remember the precise dates.

Q. You refer in your direct testimony to a suit that would be a scandal to him and to us. What do you mean by that?

A. I me'nt such a suit as this.

Q. Was that your language or his?

A. It was mine. I said so frequently. I thought it better to arrange matters amicably.

Q. You have used this language: "Mr. Adams urged me to get
73 my sister to accept a certain sum per month for her maintenance and that of her daughter." Will you swear that you ever communicated to Mr. Adams that the agreement which he made for an allowance was to continue only so long as she chose?

A. The arrangement I made I understood to be at the pleasure of the parties, and I promised Mr. Adams to inform him of any legal steps or otherwise which would absolve him from that arrangement.

Q. Is your recollection clear and certain that in your conversation with Mr. Adams you made the agreement for maintenance to depend at all upon Mrs. Adams refraining from suit for the house under the trust-deed?

A. That is my understanding and my impression. I don't think I could be mistake'.

Q. Did Mrs. Adams take your advice about procuring this divorce?

A. She did not.

Q. Up to the time of the divorce do you know whether she had ever received any rents, profits, or benefits from this house under the trust-deed?

74 A. It is a matter about which I know nothing.

Q. Did you ever ask wheth' a settlement of the house had been made upon her?

A. I heard that it had, and that is all that I know about it.

Q. Was the arrangement you made on behalf of your sister in writing?

A. I cannot be certain. I may have written to Mr. Adams that his proposition was accepted. I think Mr. Adams' proposition was first made orally, and I think it was talked of in letters.

Q. When you said Mr. Adams proposed to pay $200 monthly, was not that upon the accounting upon the loan with reference to the balance then struck?

A. It was.

Sworn to this 28th day of March, 1872, before me.

HENRY GREENFIELD, *Com.*

75 EXHIBIT "A."

DEC. 10, 1871.

Received of J. H. Adams $50 on account.

A. D. ADAMS.

EXHIBIT "B."

WASHINGTON, *Nov. 1st*, 1871.

Rec'd of J. H. Adams $50 (fifty) on account.

A. D. ADAMS.

EXHIBIT "C."

$100.00.] BOSTON, *June 29th*, 1871.

Received of Ja's H. Adams, for the month of June, 1871, one hundred dollars for Mrs. A. D. Adams & myself.

M. D. ADAMS.

76 A.

NEW YORK, *28th Oct.*, 1870.

MY DEAR SIR: I have been reflecting over the talk we had, and will undertake to settle matters on the bases we mutually agreed upon, if you will empower me to do so, if you bind yourself to pay over to me for the use and benefit of my sister and her children on the first of each month, commencing with Nov. 1st, for each of the month' from November to June, say the sum of 135 per month; and from June to November, (when fires and warm clothing are not needed,) 100 per month. I think that would be about a fair estimate, as, of course, you desire your daughter to stay at no second or third class boarding-house; and my own experience tells me that I name a moderate sum for the support of two women, that is 1,400 per annum.

If my recollection serves me rightly, the rent of the house has averraged from 1,800 to 2,000 a year. Two hundred dollars of repairs
77 put upon it would make it bring that or more. If you feel disposed to make me this proposition, I will do all in my power to have it made the basis of a settlement of the disagreeable litigation which may otherwise take place; and I believe I have sufficient influence over my sister to make her listen to my advise, when I feel I have the right to urge it imperitively.

If you consent to the terms I have named, it would fortify my pressing them, (as a guarantie of y'r sincerity.) If you w'd, send check for first month's allowance, to be used only in case of my sister agreeing to the arrangement; otherwise to be returned to you.

Y'rs, truly,

EDWIN DE LEON.

NEW YORK, *2nd Nov.*, 1870.

MY DEAR SIR: Herewith I beg to acknowledge receipt of your letter covering draft on Washington for 135 dollars, to be paid
78 over as specified in that letter. On getting receipt, I shall notify you, as have now no doubt of the confirmation of the arrangements.

Y'rs, truly,

EDWIN DE LEON.

NEW YORK, *30th Nov.*, 1870.

DEAR ADAMS: Your draft for a $135 (pay't for Dec.,) received this morning, and shall be forwarded by to-day's mail. I think you are acting judiciously in repairing the house before renting, as it certainly needs it. These small outlays come back in the increased desirability of the premises. My wife has been rather "under the weather" lately, and this, with my pressing business matters, leaves me but scant time for correspondence; otherwise I should have given you a formal receipt for your first inst'ment under our agreement.

Y'rs, very truly,

EDWIN DE LEON.

79 NEW YORK, 28*th Dec.*, 1870.

MY DEAR SIR: Your letter, covering draft for $135 *dollars*, has been received and forwarded to Mrs. Adams, at Boston, for which this will be a receipt.

With compliments of the season, y'rs, truly,

EDWIN DE LEON.

J. N. ADAMS, Esq.,
Washington City.

NEW YORK, 1*st Feb'y*, 1871.

DEAR ADAMS: Yours of 30th, covering draft for 125 dollars, has been received, and forwarded to my sister. You can send the small balance (as you suggested) to Minnie.

Sorry to hear you are pinched, but it is the universal complaint here also. My partner, Gen. Imboden, has invented a plan of elevated railway, which is exciting much attention.

80 In last Sunday's Herald you will see description of it, and he w'd be gratified to learn the appreciation of it by one so competant to judge as yourself.

Y'rs, very truly,

EDWIN DE LEON.

Please send me an order on the Boston jeweler with whom you placed my silver, as I want it over here, and oblige—

Y'rs again,

E. DE L.

NEW YORK, 90 BROADWAY, 17*th May*, 1871.

DEAR ADAMS: I was so busily occupied yesterday that I forgot to reply to your last letter. If, as you propose, you will send on draft for balance due, I will transmit it and consider the arrangement renewed. I have only to reiterate that so long as you stick to this arrangement in good faith, I will use my influence to keep things quiet. In

81 good faith, I should also feel it my duty to notify you of any steps which might, at any time, be taken to alter the position of things.

Y'rs, truly,

EDWIN DE LEON.

82 In the supreme court of the District of Columbia.

ADDIE D. ADAMS
vs.
JOSEPH H. ADAMS ET AL. } In equity. No. 2618, Doc. 11.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that, at an examination of witnesses, begun and held on the 20th day of March, A. D. 1872, and continued from time to time by , until the 22d day of March, A. D. 187 , when the within depositions were taken. I, T. D. Anderson, an examiner in chancery, did cause to be personally present, at the office of John J. Johnson, in the city of Washington, in said District, to testify on the part of and behalf of the complainant, in a certain cause now pending in the supreme court of the District of Columbia, wherein Addie D. Adams is complainant and Joseph H. Adams et al. are *complainants.*

83 In the supreme court of the District of Columbia, the 20th day of March, 1872.

ADDIE D. ADAMS
v.
JOSEPH H. ADAMS, JR., ET AL. } In equity. No. 2618, Doc. 11.

Owing to the necessary attendance before the circuit court of J. J. Johnson, esq., heretofore authorized by the supreme court of the said District to act as examiner in this cause, the parties thereto, by their counsel therein of record, hereby agree that the testimony of such may be taken by and before Thomas D. Anderson, esquire, a different examiner of the court.

BOYCE & SELDEN, *for Pl'ff.*
T. J. D. FULLER, *for Def't.*

84 MARCH 20TH, 1872.

Met in pursuance of notice. Present, Messrs. Boyce & Selden, counsel for complainant, & Mr. T. J. D. Fuller, counsel for the defendants.

Whereupon Mrs. ADDIE D. ADAMS, a resident of Massachusetts, a witness of lawful age, produced, sworn, and examined on the part and behalf of the complainant in the above-entitled cause, deposes and says, to wit:

(Mr. Fuller, counsel for defendant, objects to the examination of the complainant without a special order of the court.)

(Witness is here shown a paper purporting to be a deed, and identifies the signatures of Joseph H. Adams and Adiline Adams, thereto attached, as being genuine.)

I was named Adaline, but have always been called by the name of Addie.

Ques. State the circumstances under which you signed this deed.

Ans. After Mr. Adams purchased the house, he said he wanted to make it over to me and my children, so that in case anything hap-
85 pened to himself or his business, we would have something for my support, to be for our sole and entire use, while I lived, and for the use of my children after my death, and as the deed was made out properly, and signed before Mr. Callan, I thought it was all right.

(Objected by def't's solicitor.)

Ques. Had you entire confidence in Mr. Adams' good faith in the transaction?

Ans. I had entire confidence in Mr. Adams' good faith; so much so that I never took the paper, but left it in his possession.

Ques. Did you think your interests were as safe in his hands as in your own?

Ans. I thought them perfectly safe.

Ques. What time did you first learn there was any trouble about the deed?

Ans. I had no doubt that it was all right until the time of my divorce, and my lawyer called upon Mr. Appleton, the trustee, to sell the property, and he refused.

Ques. How long ago was that, when you first applied to him to sell?

86 Ans. About 18 months.

Ques. During all that time you thought there was no trouble?

Ans. I thought there was no trouble from the time the deed was executed.

Ques. State why you did not apply for alimony.

Ans. I did not apply for alimony because I thought the house was my own, and I thought that would be sufficient for my support.

Ques. Did you consult your lawyer upon the question of asking for alimony?

Ans. My lawyer asked me if I wished to apply for alimony, and I told him I did not, as the house was sufficient for my support.

(Objected to by defendant's solicitor.)

Ques. State your lawyer's opinion, as to applying for alimony, on seeing the deed.

Ans. My lawyer examined a certified copy of the deed, from the register's office, and thought unnecessary to apply for alimony, as the deed was sufficient.

(Objected to by defendant's solicitor.)

87 Ques. Have you two children by Mr. Adams?

Ans. I have two children by Mr. Adams.

Ques. Are they minors?

Ans. They are. There is a boy fifteen years old, and a girl eighteen.

Ques. Have you any property besides this house?

Ans. I have none whatever.

Ques. Are you a person of delicate health?

Ans. I have been sick all winter; previous to that my health was pretty good.

Ques. Have you any means of support, or any occupation?

Ans. I have no means of support; without this house, I am perfectly destitute.

Cross-examined by Mr. Fuller:

Ques. Did you ever have any personal interview with Mr. Appleton in regard to the deed?

Ans. Have had no interview with Mr. Appleton in regard to the deed. I know Mr. Appleton very well. I did not see him frequently.

88 I saw him once in passing through New York, between the date of the deed and the present time.

Ques. Have you not repeatedly, before and since 1861, stayed at Mr. Appleton's house, accepted his hospitality, and on one occasion sent for him to meet you at the cars?

Ans. I have not continually accepted his hospitality. I have dined there and taken other meals with his wife, in years gone by, but not recently. I made a visit there once, of ten days, some years ago. Do not think I have stayed there over night since the war. Mrs. Appleton and myself were on pleasant terms; never saw much of Mr. Appleton. I have no recollection of sending *of sending* for him to meet me at the cars.

Ques. At or about the time of obtaining the decree of divorce, or soon after, was not an arrangement made through the instrumentality of Mr. Edwin De Leon, your brother, to pay you a monthly stipend for the support of yourself and children, by Mr. Adams? Did he pay it, was it broken off, and why?

89 Ans. At the time of my divorce I wrote to my brother and left it with him, and he made this agreement. Mr. Adams agreed to pay $135 per month for 8 months, and $50 apiece during the summer remaining months, as long as I would not try to get possession of the house; that as soon as I made any effort of that kind he would stop the stipend.

My brother replied that he would do all he could to preserve friendly relations between Mr. Adams and myself in regard to the house, but that receiving this stipend did not do away with my right to the house, or my intention of, at any time, commencing a suit for it. A temporary arrangement was made, I think it was not in writing, other than by letter. I could not tell whether there was a written agreement between Mr. Adams and Mr. De Leon, but think not, but if it was he can tell. My brother advised me verbally that he had made the arrangement with Mr. Adams, and afterwards wrote a letter to me on the subject.

90 Ques. Did you consent to the arrangement your brother made with Mr. Adams?

Ans. I said to my brother I would consent until I was ready to begin the suit, and then I would begin it.

Ques. About what time was this?

Ans. It was a very short time after my divorce.

Ques. Did you ask him to inform Mr. Adams of the terms upon which you received it?

Ans. I did.

Ques. At this time had you applied to Mr. Appleton to sell?

Ans. I think my lawyer had previously done so.

Ques. Who was your lawyer?

Ans. A. O. Brewster and a Mr. Williams, of Boston, Massachusetts.

Ques. Do you know whether Brewster ever wrote to Mr. Appleton?

Ans. I put it in Mr. Brewster's management, but do not know of my own knowledge whether he wrote to Mr. Appleton; but am under the impression that he did.

91 Ques. Was that before or after the arrangement made by your brother for the payment of the stipend?

Ans. I am not certain, but think it was before. Cannot remember the dates.

Ques. Was the stipend agreed to be paid regularly?

Ans. On two occasions Mr. Adams failed in the payment, but resumed on the first time, the second time he did not.

Ques. Was the stipend paid up to the time the proceedings were commenced for the recovery of the house?

Ans. By no means.

Ques. How long an interval was there between the failure of the payment of the stipend and the commencement of the suit?

Ans. Do not know, but think two or three months. Had never spoken to any one of my intention to commence suit except to my lawyer and my family. The payments were made through Edwin De Leon. He was temporarily authorized to receive the payments.

92 (Examination of Mrs. Adams suspended.)
(" " " " resumed p.)

NICHOLAS CALLAN, a resident of Washington, a witness of lawful age, produced, sworn, and examined on the part and behalf of the complainants in the above-entitled cause, deposes and says, to wit:

My name is Nicholas Callan. Am a notary public of the city of Washington, and have been since 1841; recognize my signature as subscribing witness to the original deed, dated Aug. 15, 1861; recognize the signature of Thomas J. Fisher, one of the subscribing witnesses. Thomas J. Fisher now resides in New York. Recognize the signature of William J. Stone, jr., one of the subscribing witness. He is now dead. Recognize the signature of F. T. Murphy, then a justice of the

peace, and who is now deceased. I recognize the handwriting
93 of the above Fisher & Murphy as genuine. They were then justices of the peace. (I recognize the signature of the justices, acknowledging the deed.) Recognize the signatures of Thomas J. Fisher and F. I. Murphy to the acknowledgment made before of the deed, and annexed to the deed itself; do not think I recognize the handwriting of Mr. Smith on the back of the deed; do not remember the circumstances of the acknowledgment of the deed. I have been taking acknowledgements in this city for thirty years. I have never taken an acknowledgment of a deed when any intention was expressed by the party making the acknowledgment, at the time of the taking the acknowledgment, inconsistant with the import of the paper. On the parties appearing before me to make the acknowledge, I always subscribe my name as subscribing witness. The grantor or grantee are rarely ever present at the time of the execution of the deed. It has never been my
94 habit as to become subscribing witness to a deed where any intention, inconsistant with the terms of the deed, was expressed by a party to it. I have never done it in my life at any time.

Cross-examined by Mr. Fuller:

Ques. Have you any recollection of acknowledging and subscribing this deed apart from seeing your signature here?

Ans. No, sir.

Ques. Is it not the case that frequently a grantor alone comes in and asks you to subscribe your name to a deed when he might be there alone?

Ans. Yes, sir.

Ques. And the grantor takes the deed, and goes away with it?

Ans. Yes, sir.

Ques. Did you ever know such a person as John A. Appleton, of New York?

Ans. No, I do not; the only John Appleton I ever knew was Ass't Sec. of State, from Maine.

95 Ques. Is there any writing on this deed of your own which enables you to swear that this deed was ever delivered to Mr. Appleton, the person named as the grantee in the deed.

Ans. No, sir.

Ques. Do not persons frequently come to you and ask you to acknowledge a deed, and go away, and you have no knowledge of the subsequent delivery of the deed?

Ans. That happens every day.

Ques. Might such a deed bear your name as subscribing witness?

Ans. Yes, sir.

Re-examined by Mr. Selden:

Ques. In becoming a subscribing witness to the deed do you ever become so where any intention is expressed by any party to the deed not to permit the instrument to be immediately binding and effecting?

Ans. I never do.

96 By Mr. Fuller:

Ques. Do you certify as a subscribing witness to the delivery of a deed when the grantor is the only person present?

Ans. I do so frequently when the grantor is the only person present.

N. CALLAN.

Sworn and subscribed to before me, T. D. Anderson, an examiner in chancery, this 28th day of March, 1872.

T. D. ANDERSON, *Examiner.* [SEAL.]

Examination of Mrs. Adams resumed.

All payments were made through my brother excepting a few, which were paid through my daughter. I am not able to say how soon after my divorce the first payment was made.

Ques. Was there any conversation or correspondance between and your late husband in relation to this property?

Ans. I think there was none; but cannot be sure.

97 Ques. Was there any consideration ever paid by you for this property?

Ans. Nothing except the form mentioned in the deed.

(Objected to by complainant's solicitor.)

Do not remember whether I paid Mr. Callan or not. I remember that some question was asked about "being willing, &c.," but nothing else.

Ques. What witnesses had you in the divorce suit?

(Objects to answer unless required to do so by the court.)

(Objected to by complainant's counsel.)

Ques. Were you before the court as a witness in the divorce suit?

(Witness refuses to give answer in regard to that unless required to by the court.)

Ques. Was there any witness in the divorce case besides yourself?

(Witness declines to answer unless the court shall require her to do so.)

Ques. Do you refuse to answer till the court orders you to?

98 Ans. I do.

Ques. Have you asked your counsel whether you should answer?

Ans. I asked my counsel for information as to the law and used my own discretion.

Ques. Have you ever seen the trust-deed since the time of its execution until to-day?

Ans. Considering it perfectly safe in Mr. Adams' hands, I have never demanded it. I know the deed has been in Mr. Adams' possession. Never knew it out of his possession.

Ques. Was the subject of this deed after its execution ever a subject of conversation between yourself and Mr. Adams?

Ans. Yes, frequently.

Ques. Down to how late a period prior to the divorce was it a subject of conversation?

Ans. I do not know.

Ques. Was it a subject of conversation within two or three years?

99 A. I do not know. I do not remember the last time it was spoken of. He always spoke of it as making the property over to me during my life-time, and during the life-time of my children after my death.

Re-examined by Mr. Boyce:

Q. Is Mr. Appleton, the trustee named in the deed, a relation of yours?

A. No relation of mine. He is a first consin of, and an intimate friend of Mr. Adams.

Q. Was Mr. Appleton selected by Mr. Adams as trustee?

A. He was.

Q. Were you put to a great deal of trouble by Mr. Adams' failure to pay the stipend?

A. I was. I was entirely destitute. I raised money by putting my watch and a few other things in pawn. I saw the deed from time to time, and there was nothing to prevent me from taking possession
100 of it. Mr. Adams and myself were then living together. Mr. Adams never denied to me that this deed was good and valid. It was understood *to* between us to be good and valid.

Q. Did ever anything occur between you and Mr. Adams during the time of the marriage to cause you to doubt that the deed was good?

A. No; on the contrary, he always told me it was for my benefit.

Cross-examined by Mr. Fuller:

Q. Have you said what the monthly stipend was to be?

A. I did not. I remember the arrangement was that the sum was to be $135 per month during the winter months for myself and daughter; so my brother told me; $50 apiece for myself and daughter in summer. Mr. Adams took care of the boy. The divorce was made in Sept.,
101 1870, and this arrangement commenced, I think, a month or two after. The sum agreed to be paid was at first paid and continued to be paid until the time I was here last May. My residence was in Boston at that time. Was here in the spring of 1871 six weeks or two months. Never talked to anybody about the divorce. The payment was suspended because Mr. Adams thought I was going to sell the house; so I learned from my brother. But I had no intention of selling the house. I ordered my lawyer to sell the house as soon as the divorce was granted. My lawyer made no effort to sell. He did not resume the payment of the stipend while I was in Washington, but soon after returning to Boston it was resumed. I think (shown a letter from Mr. De Leon, dated May 17th, 1871) this writing is his; it looks like it, but *but* the signature is not quite like his.

(Mr. Fuller read letter from complainant's brother.)

102 He resumed payment as soon as he found out I was not going to sell the house. This I suppose to be the reason he resumed payment. He discontinued long before I began proceedings, two or three months before, I think. I don't know when the last payment was made.

Re-examined by Mr. Boyce:

I speak of the $50 stipend as applicable to myself and not to my daughter. Cannot tell why stipend was stopped. Mr. Adams paid the $135 per month for only nine months. When I claimed the house I suppose he thought that an excuse for stopping the payment of the stipend.

The counsel for defendant here offered in evidence a copy of a record of a divorce obtained in Massachusetts between the complainant and one of the defendants, Joseph H. Adams, j'r, marked Exhibit "A. D. A.," No. 1, and hereto annexed.

103 Mrs. Adams, the complainant, is three receipts of the monthly stipend, one dated Dec. 10th, 1871, another dated November 1st, 1871, and another dated June 29th, 1871, and identifies her own signature and that of her daughter.

Mrs. Adams testifies that the words "house-rent" were stricken out after these receipts had been signed.

By Mr. Boyce:

Ques. Was there any delay in paying the stipends?

Ans. These stipends were not paid in advance; that receipted for on

the 10th Dec. was the stipend due for the month of November, and should have been paid on the 1st Dec.; these delays caused me great uneasiness, as I feared I should be left again without means of support. I was asked yesterday how long a time elapsed between the last payment and the beginning of the suit, and said one or two months.

104 It seemed longer than it really was. It was from the 10th to the 20th of Dec. I received information that it was to be withheld. I have no memoranda to refer to, but trust to my memory. I have to use these receipts to refresh my memory.

Cross-examined by Mr. Fuller:

I came to Washington about the middle or last of October, 1871. I did not come to Washington for the purpose of commencing this suit. That was no part of the object of my coming to Washington.

Ques. How soon after your arrival here did you conclude to commence this suit?

(Question objected to by complainant's counsel.)

Ans. I had no intention of commencing this suit until my stipend ceased. I should not have done it at that time had not the stipend stopped.

Qaes. Was there anything due under the agreement when you commenced the suit?

(Question objected to by complainant's counsel.)

105 Ans. During the month of November I was paid $50 instead of my share of $135, which was agreed upon, and fearing a similar delay, and the uncertainty of payment, was the cause of my beginning the suit. The lesser amount was totally inadequate to my support.

Ques. Under whose advice, and how, came you to write the two last receipts in Washington, dated Nov. & Dec., on account of house-rent?

(Objected to by complainant's counsel.)

Ans. Entirely from the dictates of my own judgment, as I considered the house my own, and therefore gave a receipt for the portion of the rent I received from it.

Ques. Why did you not your former receipts in the same way?

(Objected to by complainant's counsel.)

Ans. I did not think of it.

Re-examined by Mr. Boyce:

106. The reason I had for commencing the suit at the time I did was because I heard Mr. Adams was going away, and I did not know how long he would be gone.

ADDIE D. ADAMS.

Sworn and subscribed to before me, T. D. Anderson, an examiner in chancery, this 21st day of March, 1872.

T. D. ANDERSON. [SEAL.]

MARCH 21st, 1872.—Met in pursuance of adjournment.

Present, Messrs. Boyce & Selden, counsel for complainant, and Mr. J. T. D. Fuller, counsel for defendant.

Whereupon AGNES DE LEON, a resident of Washington, a witness of lawful age, produced, sworn, and examined on the part and behalf of the complainant in the above-entitled cause, deposes & says, to wit:

Examined by Mr. Boyce:

107 At the time Mr. Adams bought the house, my mother, brother, & sister, & myself lived together in one family. Mr. Adams men-

tioned it to us all that he had purchased the house to make it over to his wife and children, for her use during her life-time, and to the children afterwards. Since Aug. 13, 1861, he has told me, at various times in conversation, that it was securely settled upon his wife. I am certain he has mentioned this within the four or five years.

Cross-examined by Mr. Fuller:

I am a sister of the complainant. Could not tell how many conversations I have had with Mr. Adams in regard to this house. I can recall to mind the last one. Mr. Adams and myself were present in the front parlor of the house in controversy. I don't think anybody else present. I do not remember exactly. I can't remember what led to
108 the conversation, but the words he used were these: "There is one thing certain, if I die to-morrow this house and my life-insurance will put my family above want." I then said, "One of the best things you ever did was settling this house on your wife;" and he then answered "Yes." This was some time within the last four or five years. Cannot remember the date nor exact year. It was not impressed upon my memory, because I was occupying the house at the time.

Ques. Under what terms were you occupying the house at the time?

(Objected to by complainant's counsel.)

Ans. I rented the house from May until December, but cannot tell the year. It one of the years that Governor Randall was Postmaster-General. At the expiration of that time my mother was too ill to be removed, and I agreed to retain it for another year.

Ques. Of whom did you rent the house?

(Objected to by complainant's counsel.)

109 Ans. I rented from Mr. Adams, who managed the property for my sister. I cannot state the exact year. I do not remember. I always alluded to the house as being my sister', and was never contradicted, in my conversations with Mr. Adams, by him. I paid the rent to Mr. Adams.

Ques. Did you ever pay rent to any one else?

(Objected to by complainant's counsel.)

Ans. I never did. There was nothing particular which impressed this conversation with Mr. Adams upon my mind, but I remember distinctly sitting at the front window. I think some death in the neighborhood suggested the conversation.

Ques. Where did you remove to when you gave up this house?

(Objected to by complainant's counsel.)

Ans. I do not remember.

Ques. Where did you come from when you took the house?

Ans. From Mrs. Porter's, on Vermont avenue.

(Objected to by complainant's counsel.)

110 Ans. The summer after the fall of Richmond, I think, I spent in Baltimore. My life has been spent in travelling about from place to place, and consequently cannot remember dates and places with much particularity. With regard to conversations at the house in controversy, on New York avenue, I was in great trouble at the time, and, seeing few outsiders, things that happened impressed themselves upon my memory. The winter following the fall of Richmond I spent part of it in York, Pa., and part in Washington. Cannot tell where I spent the summer of 1866. Do not remember where I spent the winter of 1866 & '67. Do not remember where I spent the summer of 1867.

Ques. Were you authorized to receive money of Mr. Adams for your brother, Edwin De Leon?

(Objected to by complainant's counsel.)

Ans. I was.

111 Ques. Did you receive various sums at different times, giving receipts for them?

(Objected to by complainant's counsel.)

Ans. I did.

Ques. At this time when he said, "If I should die to-morrow," &c., &c., is it impressed upon your mind?

Ans. It is; all our conversations upon the subject was to the effect that the house belonged to my sister.

Ques. Did all his coversations on the subject of the house convey the same meaning as the one at the window, before alluded to?

Ans. They all left the impression on my mind that the house was my sister's property.

Ques. Have you had any converation with Mr. Adams in relation to the ownership of the house since the alienation of the parties to this suit?

Ans. I have had such conversation.

Ques. How long prior to this conversation had you been aware of any alienation of Mr. & Mrs. Adams?

112 Ans. I had known it for quite a long time prior to the conversation with Mr. Adams.

Ques. Did you know of it before your return from Egypt?

Ans. I did not.

Ques. Was it before or after the fall of Richmond?

Ans. I cannot say definitely.

Ques. What was your understanding as to their relations when you came from Richmond to Baltimore?

Ans. I knew they were not particularly friendly.

Ques. Where did Mr. & Mrs. Adams live when you had the house?

Ans. Mr. Adams and family were living together in Roxbury, in Mr. Adams' dwelling-house.

Ques. Were you a witness in the divorce suit?

Ans. I was not.

(Objected to by complainant's counsel.)

Ques. Did you ever communicate to your sister the conversation you had with Mr. Adams while sitting with him at the window?

113 Ans. I have spoken of it to her.

Ques. How early?

Ans. I repeated the conversation to my sister the next time I saw her; cannot tell when that was, but know it was previous to the divorce.

Ques. When did you first ascertain there was any dispute about the title of the house?

Ans. I never heard of it until after the divorce, when my sister wrote me that Mr. Appleton refused to act as trustee. She was destitute, and I asked her why she did not sell her house.

Ques. How long was that after the divorce?

Ans. I cannot say how long; but it was when she wrote me she was destitute.

Ques. Do you not know she was getting a hundred & thirty-five dollars a month?

(Objected to by complainant's counsel.)

Ans. I did not; and do not now.

Ques. Where did you live when divorce was granted?

(Objected to by complainant's counsel.)

114 Ans. In Warrenton, Virginia.

Ques. How long did you live there?
Ans. I go there in the summer.
Ques. Did you know the proceedings were going on at the time?
(Objected to by complainant's counsel.)
Ans. I did not.
Ques. Was there any interruption of the intimacy between yourself and Mr. Adams after the divorce?
(Objected to by complainant's coun.)
Ans. Recently there has been.

AGNES DE LEON.

Sworn and subscribed to before me, T. D. Anderson, an examiner in chancery, this 21st day of March, 1872.

[SEAL.] T. D. ANDERSON,
Examiner.

115 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, T. D. Anderson, examiner in chancery, do hereby certify that, in pursuance of the annexed notice, the foregoing depositions were taken down and by me reduced to writing in the presence of, and from the statement of the witnesses at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses, and by them subscribed in my presence, and in the presence of Messrs. Boyce & Selden, counsel for complainant, and Mr. T. J. D. Fuller, counsel for defendant, who were then and there attending; the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further testify that I am not of counsel for any of the parties to said cause, or in any manner interested thereon.

[SEAL.] T. D. ANDERSON,
Examiner.

116 EXHIBIT A. D. A., No. 1.

COMMONWEALT' OF MASSACHUSETTS:

I, Reuben A. Chapman, chief justice of the supreme judicial court of the Commonwealth of Massachusetts, do certify that George C. Wilde, esquire, whose signature is affixed to the paper hereto annexed, is clerk of said court, holden at Boston, in and for the county of Suffolk, in said Commonwealth, and hath the keeping of all the ancient files, records, and proceedings of said court thoughout the Commonwealth down to the first day of August, A. D. 1797, as well as the files, records, and proceedings of said court, holden as aforesaid, for said county of Suffolk, subsequent to that time, and is by law the proper person to make out and to certify copies of all the records and proceedings of the said supreme judicial court previous to the said first day of August, A. D. 1797,
117 as well as of all records and proceedings of the said court, holden as aforesaid for the said county of Suffolk, subsequent to that time; and that full faith and credit is and ought to be given to his acts and attestations done as aforesaid, and that his attestation to the paper hereunto annexed is in due form.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be hereunto affixed this eighth day of March, in the year one thousand eight hundred & seventy-two.

[SEAL.] REUBEN A. CHAPMAN,
Chief Justice, S. J. C.

118 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

To all persons to whom these presents shall come, greeting:

Know ye that among our records of our supreme judicial court for said county, it is thus contained:

To the honorable the justices of the supreme judicial court within and for the county of Suffolk.

Respectfully libels and represents Addie D. Adams, of Boston, in said county, that she was lawfully married to Joseph H. Adams at Washington, in the District of Columbia, on the twenty-ninth day of September, A. D. 1852; and afterwards your libellant and the said Joseph H. lived together as husband and wife in this Commonwealth, to wit, at Boston; that your libellant has always been faithful to her marriage vows and obligations, but the said Joseph H., being wholly re-
119 gardless of the same, at Boston aforesaid, and at divers other places within three years last past, did commit the crime of adultery with certain lewd women to your libellant unknown.

Therefore your libellant prays that a divorce from the bonds of matrimony may be decreed between your libellant and the said Joseph H., and that she may be allowed the custody of the minor children, Marion D., aged sixteen, and Joseph H., aged thirteen years, the issue of the aforesaid marriage.

Dated the fifth day of March, A. D. 1870.

ADDIE D. ADAMS.

Witness: A. O. BREWSTER.

This libel was presented to Horace Gray, jr., esquire, one of the justices of the said court, on the eleventh day of March, A. D. eighteen hundred and seventy, who therefore made the following order, viz:

120 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Supreme judidial court, at chambers, in Boston, March 11, 1870.

On the foregoing libel it is ordered that the libellant give notice to the said Joseph H. Adams to appear before the justices of this court to be holden at Boston, within and for said county of Suffolk, on the third Monday of April next, by adjournment from the first Tuesday of April next, by serving him with an attested copy of said libel, and of this order thereon, fourteen days at least before said third Monday of April next, that he may then and there shew cause why the prayer of said libel should not be granted.

By the order of Horace Gray, jr., esq., of the justices of said court.

GEO. C. WILDE, *Clerk.*

121 Upon which libel is the following return by B. F. James, served the same.

WASHINGTON, D. C., *March* 21, 1870.

I hereby certify that I this day served upon Joseph H. Adams, the libel't above named, a person well known to me, an attested copy of the above libel and order thereon.

B. F. JAMES.

Sworn to and subscribed before me this 21st March, 1870.
[SEAL.] EDM' F. BROWN,
Notary Public.

On said fourth Monday of April the libellant appeared, by A. O. Brewster, esq., her attorney, and entered her libel of record, and the libellee also appeared, by L. W. Osgood, esq., his attorney, but afterwards during said term the said Joseph H. Adams, although solemnly called to come into court, did not appear, but made default.

Whereupon a hearing was had; the allegations of said libel be-
122 ing satisfactorily proved, it was ordered and decreed by the court on the fifty-eighth day of said April term, being the thirteenth day of September, A. D. eighteen hundred and seventy, that the bonds of matrimony subsisting between the Addie D. Adams and Joseph H. Adams be, and the same are hereby, dissolved on account the adultery of the said Joseph H. Adams.

It was further ordered and decreed by the court, on said thirteenth day of September, that the libellant have the custody of Marion D. Adams and Joseph H. Adams, the minor children named in the libel.

All and singular which premises we have held good by the tenor of these premises to be exemplified.

In testimony whereof we have caused the seal of our supreme judicial court to be hereto fixed.

Witness Reuben A. Chapman, esquire, chief justice of said court, this eighth day of March, A. D. eighteen hundred and seventy-two.
[SEAL.] GEO. C. WILDE, *Clerk.*

Order for hearing.—Filed April 16, 1871.

123 In the supreme court of the Dist. of Col'a.

ADAMS
v.
ADAMS ET AL. } 2618. Equity.

The clerk will please set down this cause for hearing at the special term to be holden in May next.

BOYCE & SELDEN,
Sol'r's for Compl't.

Cause set for hearing and placed on May, 1872, calendar, in obedience to precipe.
By the clerk.

124 *Decree.—Filed May* 18, 1872.

In the supreme court of the District of Columbia, holding an equity court for said district, the 17th day of May, 1872.

ADDIE D. ADAMS
vs.
JOSEPH H. ADAMS, JR., JOHN A. APPLETON. } No. 2618. Equity docket, 11.

This cause came on to be heard, and was argued by counsel on this 18th day of May, 1872, and thereupon, upon consideration thereof, it is

the same day by the court ordered, adjudged, and decreed as follows:

First. That the trusts expressed in favor of the plaintiff in and by the deed of trust dated the 13th day of August, 1861, which is mentioned in the seventh paragraph of the plaintiff's bill of complaint, and whereof a copy is filed in this cause, be, and the same are hereby, declared valid and effective in equity as between the parties hereto.

125 Second. That the defendant Joseph H. Adams, jr., be, and he is hereby, requested to deliver up to the complainant, or to her trustee hereinafter appointed, the said deed of trust.

Third. That Edwin De Leon, of the city and State of New York, be, and he is hereby, appointed the trustee of the complainant to execute the said trusts in the said deed of trust declared in her favor, in the stead and place of the defendant John A. Appleton, and with the same powers, and in the same mode and manner as the said Appleton might or could execute such trusts under the said deed of trust.

Fourth. That the said Joseph H. Adams, jr., be, and he is hereby, required to deliver up to the said Edwin De Leon, trustee herein appointed, possession of the real estate and premises mentioned and described in said deed of trust.

Fifth. That the said Joseph H. Adams, jr., do, and he is hereby required to, come to an account before the auditor of this court

126 for the rents and profits of such real estate and premises that have accrued since the filing of the bill of complaint in this cause, allowing, as a credit to the said Joseph H. Adams, jr., on such accounting, any payment or payments which the said defendant Adams may have made to the plaintiff in the mean time; and,

Sixth. That the plaintiff's costs in this suit be paid by the said Joseph H. Adams, jr.

By the court.

A. WYLIE.

127 Proceedings before the supreme court of the District of Columbia, in general term, at September term, 1872, commencing on Monday, the 23d day of September, 1872. Present, Chief Justice Cartter, and Justices Wylie and Humphreys.

MONDAY, *September* 23, 1872.

By order of the court, the session is announced by the proclamation of the marshal.

TUESDAY, *October* 22*d*, 1872.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter, and Justices Wylie and MacArthur.

ADDIE D. ADAMS
vs.
JOSEPH H. ADAMS, JR., AND John A. Appleton. } No. 2618. Equity docket, 11.

Argument resumed and concluded for plaintiff by Mr. Selden and Mr. Boyce, and closed for defendant by Mr. Riddle.

128 And thereupon, upon consideration thereof, it is by the court,

now here, ordered, adjudged, and decreed that the decree of the special term, from which the appeal to this term is prosecuted, be, and the same is, in all things affirmed, with costs.

And from this decree the defendants, by their solicitor, Mr. Fuller, pray an appeal to the Supreme Court of the United States, and the same is allowed; and the court orders that the penalty of the appeal-bond be two thousand dollars.

129 In the supreme court of the District of Columbia, the 28th day of October, 1872.

ADDIE D. ADAMS
vs.
JOSEPH H. ADAMS, JR., AND John A. Appleton. } No. 2618. In equity. On appeal.

Know all men by these presents that we, Joseph H. Adams, as principal, and John Wilson, as security, are bound unto the above-named Addie D. Adams in the sum of two thousand dollar', her executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administors, firmly by these presents. Sealed with our seals and dated this 28th day of October, 1872.

Whereas the above-named Joseph H. Adams has taken an appeal to the Supreme Court of the United States to reverse the judgment rendered in the above suit, in equity, by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Jos. H. Adams shall prosecute their said appeal to effect, and answer all damages and costs if he shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOSEPH H. ADAMS. [L. S.]
JOHN WILSON. [L. S.]

Sealed and delivered in presence of—
HOWARD WALL.
R. H. PORTER.

The foregoing bond is hereby approved this 31st day of October, 1872.
D. K. CARTTER,
Chief Justice.

130 DISTRICT OF COLUMBIA, *to wit:*

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing 129 pages of paper-writing are correctly copied from the originals on file and of record in the clerk's office of said court; said originals together constituting the entire record in an equity cause pending and lately decided in said court, entitled:

ADDIE D. ADAMS, COMPL'T,
vs.
JOSEPH H, ADAMS, JR., AND John H. Appleton, def'ts. } No. 2618. Equity docket, 11.

In testimony whereof I have hereunto signed my name and affixed the seal of said court this 3d day of December, A. D. 1872.

R. J. MEIGS, *Clerk.*
By L. P. WILLIAMS,
Assistant Clerk.

(Indorsement on cover:) No. 352. Joseph H. Adams, jr., and John A. Appleton, appellants, vs. Addie D. Adams. Dist. of Columbia sup. court. Filed 9th December, 1872.

Supreme Court of the United States.

JOSEPH H. ADAMS *et al.*, Appellants,
v.
ADIE D. ADAMS, Appellee.
No. 75.

APPELLANT'S BRIEF.

ASSIGNMENT OF ERRORS.

1. The court below erred in deciding that the deed in question, under which the appellee claims title, had ever been delivered, or became a valid and operative deed of conveyance.

2. It erred in deciding that the appellant, Adams, should deliver the deed in question to the appellee, as it had always remained in his possession.

3. It erred in deciding that the appellants, Adams or Appleton, ever became seized of the premises in trust, to the use of the appellee or any other persons.

4. It erred in making the said Appleton trustee without his knowledge, and then removing him and appointing Edwin De Leon, a person beyond its jurisdiction, in his stead.

5. It erred in deciding that the said Adams should surrender his possession and account for the rents and profits from the date of the suit.

6. The court erred in holding that a court of equity can

decree as valid a deed of gift made without consideration, the possession of the deed and possession of the premises always remaining with the donor.

7. The court erred in deciding that the delivery of a deed made to a trustee, to the *cestui que trust*, is a valid delivery in law to the trustee, where the trustee had no knowledge of the execution of the deed, and refused to accept the trust when brought to his knowledge.

The question raised by the bill and answer, and about which the parties are at issue, is, whether the deed of August 18, 1861, was ever delivered by the grantor to the grantee, or became in law a valid and operative deed?

The delivery of a deed is essential to the transfer of the title.

Younge *v.* Gilbeau, 3 Wallace, 641.

The delivery of a deed is a fact, *dehors* the deed, and to be proven, like any other fact, essential in the case. There cannot be constructive or presumptive evidence of the delivery of a deed, when the fact of its non-delivery is clearly and positively shown in the negative. It is only in the absence of positive proof of the delivery or non-delivery of a deed, that presumptive or constructive evidence of its delivery, may be received or resorted to. But when it is shown, as it is contended by the appellants, that the deed was not delivered, circumstances of a presumptive character, become of no consequence, and are entitled to no consideration whatever.

The bill alleges the deed was delivered, but does not say to whom. It alleges that "*said original indenture, after being duly signed, sealed, acknowledged, and delivered by the parties thereto,*" was recorded, &c., &c., * * * * Appleton, the party of the third part, named in said deed, was not a party to it, did not sign it; it never was delivered to him, or to any person authorized by him to receive it, and he had no knowledge of its existence for nine years afterwards; and when its existence was brought to his knowl-

edge, he utterly repudiated it, and the trust attempted to be thrust upon him.

The answers of the appellants, Adams and Appleton, is full and distinct, that the deed never was delivered to Appleton. Adams took the deed, had it recorded, and immediately regained the possession of it, and always has retained the possession of it, to this day. He furthermore swears he never intended to deliver it, and never did deliver it, to any person.

To the testimony and answer of Appleton, the appellants offered no evidence of a contradictory character.

To the testimony and answer of Adams, the plaintiffs offered evidence of a defensive character, but not tending to show that the deed was delivered, but going only to the extent that defendant, Adams, had said, if he should die, his house and life insurance would make his wife and children comfortable. One witness says that he said he had made his house over to his wife. All of the evidence of a defensive character is from the brothers and sister of the plaintiff.

The facts are, as claimed by the appellants, that Adams, on the 15th day of July, A. D. 1859, being the undisputed owner in fee of the premises, on that day executed a deed in trust to Wm. J. Stone, to secure the payment of his four notes of hand payable on time. These notes he subsequently paid, and took up at their maturity, and prior to the 13th day of August, A. D. 1861. The bill so alleges, and the answer admits it. That on said 13th day of August, A. D. 1861, the supposed deed from Stone to Appleton, in trust for the USES therein mentioned, was made, and the same came into the possession of said Adams, and he carried it to the register of deeds for the District of Columbia, and caused it to be recorded, and soon after it was recorded he took it from the register's office, and ever since, has kept and retained it in his sole and exclusive possion. That he never delivered the deed to said Appleton, or to any person in his behalf. That said Appleton never had the deed or accepted the trust,

nor had he any knowledge of the existence of any such supposed deed, until nine years thereafter, (in A. D. 1870,) and when the fact of the existence of such a deed became known to him, he refused to accept it, or to have anything to do with it. That Adams never delivered it to his wife, or to any person whomsoever. That said Adams, at no time, intended to divest himself of the title to the premises in question. That Adams has always retained the possession of the premises, making expensive improvements thereon, paying the taxes, and taking to his own use the rents and profits. That there existed at the time other motives than to convey the property to his wife, in his having the deed placed on record, which are set forth in his answer.

The Law of the Case.

A deed made without delivery is void and inoperative. To this rule there is no exception. A deed made, but not delivered, and if subsequently is delivered, though recorded anterior, it takes effect from the time of delivery, and not from the date of its execution. (Parmalee *v.* Simpson, 5 Wallace, p. 81.) The court say, speaking of the deed to Simpson made and recorded before a delivery, and a mortgage of the same premises made after recording the first deed, "*if this position is sustained by the evidence, there is an end of the controversy; for nothing passes by a deed until it is delivered.*"

And more explicit is the language of this court in the case of *Younge* v. *Gilbeau*, before cited, in commenting upon the instruction of the court below, that a deed recorded, as between the parties, (creditors not interfering,) was binding, whether delivered or not, the court says: "*There was clear error in this instruction.* The delivery of a deed is essential to the transfer of the title. It is the final act, without which all other formalities are ineffectual. To constitutue such delivery, the grantor must part with the possession of the deed, or the right to retain it. The registry by him is entitled to great consideration upon this

point, and might justify, in the absence of opposing evidence, a presumption of delivery. But here any such presumption is repelled by the subsequent and attendant circumstances. Here the registry was, of course, made without the assent of the grantee, as he had no knowledge of the existence of the deed, and the property it purported to convey always remained in the possession of the grantor and under his control.

If Adams may be regarded as the owner of the property, as he was in equity, if not in law, it hits our case precisely.

That he was the owner in equity, and that a court of equity would decree a release from Stone, as the notes were paid at maturity, and the deed of trust became null and void by its terms. That a mortgagee of a satisfied mortgage cannot maintain an action, to eject the mortgagor, is decided by the case of Gray *v.* Jenks *et al*, 8 Mason, p. 520.

Whether the legal title was, and still remains in Stone or in Adams, it is urged, it can make no difference, as neither one delivered the deed to Appleton, nor did he become a party to it.

If Adams was the equitable owner, he had a right to dispose of the property by gift or sale. There existed no legal or moral obligation to convey it to his wife.

The plaintiff paid no consideration, parted with nothing. She cannot maintain any action at law. The husband might convey the estate to his wife without consideration, creditors not complaining. But the intention of making the gift, and the manifestation of it, by the observance of the necessary and legal forms of conveyance, is indispensable, before a court of equity, will enforce the trust, and turn the legal owner out of possession. The husband has rights as well as duties that he cannot avoid if he would.

In this instance, the evidence of the *gift* is incomplete. The possession of it, was never parted with, and the author-

ities cited, show that equity will not lend its aid to enforce specifically a *gift*, where the circumstances attending it will not enable the donee to enforce his title at law.

Again, there is much matter encumbering the record, that has no relevancy to the point in controversy. For instance, the record concerning the divorce has nothing to do with the question.

The condition of the title remained unchanged for a period of nine years. The fact of the divorce, by no possibility that is perceived, could change or vary the condition of the title, either to render the *title* valid or invalid. It had no retrospective action upon the title, and why it was put in the case is not readily understood.

In conclusion, our points are—

I. No legal estate passed to Appleton.

1st. Because there was no delivery of the deed.

Shep. Touch. § 7, Moore, 300.

Wheelwright *v.* Wheelwright, 2 Mass., 447, and cases there cited.

Fay *v.* Richardson, 7 Pick., 910.

Fairbanks *v.* Metcalf, 8 Mass., 289.

Carr *v.* Hoxie, 5 Mason C. C. R., 60.

Brown *v.* Hatch, 3 N. H., 304.

Registry is not delivery.

Maynard *v.* Maynard, 10 Mass., 458. A very strong case.

Harrison *v.* Trustees of Phillips Academy, 12 Mass., 461.

Powers *v.* Russell, 13 Pick., 75.

Delivery, subsequent to registry, may be proved, and so registry cannot be delivery.

Fairbanks *v.* Metcalf, (*supra.*)

2d. Because there was no acceptance by the grantee. The title does not pass unless there is an acceptance.

Jackson *v.* Phipps, 12 Johns., 418.
Carr *v.* Hoxie, (*supra.*)
Harrison *v.* The Trustees of Phillips Academy, (*supra.*)

"It is very certain that, until the deed was accepted, the title was in the grantor; for no man can make another his grantee without his assent; and a deed made to a man with all the legal formalities, and even entered in the public registry, would be *null* if not accepted." *Ibid.*

So that, even had this instrument been delivered to a third person for the use of the grantee, and the grantor had refused to accept it, it would have been void *ab initio—a fortiori* when it was so delivered.

II. A court of equity will not enforce a voluntary gift or conveyance, made without consideration, as against the grantor in his lifetime, at the instance of the donee or grantee.

In support of which the following authorities are cited:

Bunn *v.* Winthrop, 1 J. C. C., 329.
Ellison *v.* Ellison, 6 Vesey, 656.
Autrobus *v.* Smith, 12 Vesey, 39.
Edward *v.* Jones, 1 Mylne & W., 226.

The cases of Sloane *v.* Cadogan, Fortesque *v.* Barnett, and Kekewith *v.* Manning, (1 DeG., McN. & G., 176,) which are cited in Hill on Trustees as overruling Edward *v.* Jones, only overrule it so far as this: they decide that where the owner of an equitable interest does all in his power to assign that interest, such a transfer will be enforced by equity without regard to the legal title, and even, perhaps, without notice to the holder of the legal estate. But they exclude the doctrine that equity will interfere where there is no valuable consideration to complete what the grantor has purposely left incomplete.

The grantor must do all in his power to carry out his intention that the nature of his estate will admit.

Milroy *v.* Lord, 8 Jur. U. S., 806–800.

Autrobus *v.* Smith, (*supra.*)

The rule is laid down in Stone *v.* Hackett, (12 Gray, 227,) which was decided on the ground that the transfer was complete.

III. This instrument cannot take effect as a declaration of trust.

An instrument purporting to be a conveyance, * * which does not divest the grantor of his estate, does not create a trust.

Autrobus *v.* Smith, 12 Vesey, 39.

Milroy *v.* Lord, p. 809.

But if the trust fails, and cannot take effect as intended, equity will not give it validity in any other way. (*Ibid.*)

If this were for a valuable consideration, it might be held that, though inoperative as a conveyance, it was a contract to convey. But, even in that case, the assent of the promisee would be a necessary element, and the delivery of the instrument. But since there is no valuable consideration, a promise to convey would be inoperative, even if it could be proved. It requires a valuable consideration to move a court of equity to enforce a mere contract.

See the cases cited in Hill on Trustees.

A STRONG CASE IN POINT.

Holloway v. *Headington*, (8 Simons, 324.) Mr. Holloway, plaintiff, joined with her husband in conveying her estate, *without any valuable consideration*, to trustees, to hold for the benefit of the wife for life, then for husband for life, if he survived her, then to plaintiff's children. Husband and wife separated. But the court refused to give effect to the alleged trust.

Meek v. *Kettlewell*, (1 Hare, 474, 475.) John Kettlewell, by will, devised his estate to trustees to the use of his daughter during her life, then to her children who should survive. Daughter married T. Meek, the plaintiff.

Mary Kettlewell, defendant, by indenture between herself and plaintiff, in consideration of natural love and affection, and 10*s.* paid by plaintiff, conveyed her reversionary interest, &c., to trustees (without giving them any notice) for benefit of plaintiff.

Held, that the trustees never having had notice, and no legal estate having been actually conveyed, the relation of trustee and *cestui que trust* did not exist; and the court would not enforce it.

Appealed and sustained. (1 Phillips, 342.)

Buck v. *Keep*, (23 Law Journal, Chancery, 539.) A defendant executing a voluntary assignment of a reversionary interest in a sum of stock, without making any transfer of the fund, will not be compelled either to transfer the fund or to do any act to render the assignment available.

T. J. D. FULLER, *Solicitor*.

Supreme Court of the United States.

OCTOBER TERM, 1874.

JOSEPH H. ADAMS, Jr., and JOHN A. APPLETON, Appellants.

v.

ADDIE D. ADAMS, Appellee.

No. 75.
Appeal from Supreme Court of the District of Columbia.

APPELLEE'S BRIEF.

ABSTRACT OF THE CASE.

The appellee and Mr. Adams, one of the appellants, intermarried in 1852. (Rec., pp. 9, 18.)

In 1856, *Edwin De Leon*, a brother of the appellee, while residing in Egypt, received from Mr. Adams a letter stating that the writer "desired to purchase a house which would always *be a home for his wife and children in case of anything happening to himself*, and that all he wanted was $6,000 cash payment, to secure one in every way suited to him." (*Id.*, 18, 20.)

De Leon, in reply, inclosed to Mr. Adams a bill of exchange on London for £1,200 sterling, requesting him "to use it for that purpose." (*Id.*, *ib.* 1.*)

On the 13th of June, 1859, Mr. Adams purchased and became the owner, by deed, of certain valuable improved real estate, situate on New York avenue, in this city.

On the 15th of the same month, in conjunction with the appellee, then his wife, and to secure the balance of the

*This advance, by arrangement between the parties, was liquidated in 1866. (*Id.*, 18, 22)

purchase money, evidenced by certain promissory notes, Mr. Adams conveyed the property in trust to one *Mr. Stone*, since deceased.

After these notes (which, before their maturity, had passed into the hands of one *McGuire*) had been fully paid, according to their respective tenors and effects, (*Id.*, 1, 2, 4, 9,) and on the 13th of August, 1861, Adams and wife, McGuire, and Stone, by their common deed, conveyed the premises to *Appleton*, now one of the appellants, "a first cousin and intimate friend of Mr. Adams," (*Id.*, p. 30,) in trust, *for the appellee, during her life*, with power on her part *to appoint the inheritance*, through the said trustee, and, in default of the exercise of such power, with remainder over in fee to the children of Mr. and Mrs. Adams living at the time of the death of the first taker, and in case the appellee should die without making such appointment, and without leaving any issue of her marriage with Mr. Adams, *then, in trust to Mr. Adams himself, in fee.* (*Id.*, pp. 4, 5.

This instrument of conveyance was signed, sealed, and acknowledged in the usual form, by all of the grantors therein, as their several act and deed, the "privy examination" of the appellee being taken, the subscribing witnesses attesting that in their presence the instrument was signed, sealed, *and* DELIVERED, (*Id.*, pp. 5, 6,) and no intention inconsistent with the immediate operation of the deed being expressed by any of the parties.*

The acknowledgment of Stone was taken on the 13th of August, 1861, the date of the deed, that of Mr. Adams on

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October 16, 1861, and thereafter, on the same day, that of the appellee, who acknowledged that she had "willingly signed and *delivered*" the instrument. (*Id.*, p. 6.)

In this condition the conveyance was carried by Mr. Adams to the office of the register of deeds, and there, on October 31, 1861, (*Id.*, p. 3,) *by his own order*, PLACED ON RECORD.

It is shown that he afterwards frequently recognized the rights of the appellee, under the instrument, *down to the period of the divorce.* Mrs. Adams says: "He always spoke of it as making the property over to me." (*Id.*, p. .) "He always told me it was for my benefit." (*Id.*, p. .) "Mr. Adams never denied to me that the deed was good and valid. It was understood and known between us as a good and valid deed." (*Id.*, p. .)*

Miss De Leon, a sister of the appellee, deposes as follows: "At the time Mr. Adams bought the house, my mother, brother, and sister, and myself lived together in one family. Mr. Adams mentioned to us all that he had purchased the house to make it over to his wife and children for her use during her lifetime, and to the children afterwards. Since August 18, 1861, he has told me at various times in conversation, that it was securely settled upon his wife." (*Id.*, 32, 33.)

"All our conversations upon the subject were to the same effect, that the house belonged to my sister." (*Id.*, 34.)

On cross-examination, she says that in a conversation [subsequently communicated to the appellee, p. 34] which occurred after the execution of the deed, between Mr. Adams and herself, the former declared: "There is one thing certain, if I die to-morrow, this house and my life insurance will put my family above want." (*Id.*, p.)

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purchase money, evidenced by certain promissory notes, Mr. Adams conveyed the property in trust to one *Mr. Stone*, since deceased.

After these notes (which, before their maturity, had passed into the hands of one *McGuire*) had been fully paid, according to their respective tenors and effects, (*Id.*, 1, 2, 4, 9,) and on the 13th of August, 1861, Adams and wife, McGuire, and Stone, by their common deed, conveyed the premises to *Appleton*, now one of the appellants, "a first cousin and intimate friend of Mr. Adams," (*Id.*, p. 30,) in trust, *for the appellee, during her life*, with power on her part *to appoint the inheritance*, through the said trustee, and, in default of the exercise of such power, with remainder over in fee to the children of Mr. and Mrs. Adams living at the time of the death of the first taker, and in case the appellee should die without making such appointment, and without leaving any issue of her marriage with Mr. Adams, *then, in trust to Mr. Adams himself, in fee.* (*Id.*, pp. 4, 5.

This instrument of conveyance was signed, sealed, and acknowledged in the usual form, by all of the grantors therein, as their several act and deed, the "privy examination" of the appellee being taken, the subscribing witnesses attesting that in their presence the instrument was signed, sealed, *and* DELIVERED, (*Id.*, pp. 5, 6,) and no intention inconsistent with the immediate operation of the deed being expressed by any of the parties.*

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that he several times heard Mr. Adams speak of the title and ownership of the property. That Mr. Adams informed witness "emphatically that the house and lot referred to was made over to the complainant as her property;" and that this had been done "as a provision for the support of herself and children against accidents, he [Adams] being on a salary in the Government employ." (*Id.*, p. 15.) This was in the spring or summer of 1865. "He also said the same thing to me in Roxbury, Massachusetts, and several times subsequently at the defendant's office at the Patent Office, District of Columbia, and again, and the last time, in 1870." (*Id.*, *Ib.*) *

It appears, however, that the appellee was never clothed with manual possession of the deed, which was suffered to remain under the care and custody of her husband, the appellee having "entire confidence in Mr. Adams's good faith;" "so much so," she states, "that I never took the paper, but left it in his possession."

She considered it in such custody "perfectly safe;" "had no doubt of it" until the time of her divorce. "I saw the deed from time to time, and there was nothing to prevent me from taking possession of it. Mr. Adams and myself were then living together." (*Id.*, pp. 26, 27.)

In March, 1870, Mrs. Adams filed her libel for divorce in the supreme judicial court of Massachusetts against Mr. Adams, and thereafter, he having "*appeared by his attorney*," and the allegations of the libel "*being satisfactorily proved*," in the month of September of the same year the parties were divorced *a vinculo*,† the custody of the two

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* The same witness says that in the fall of 1865, at Roxbury, Mr. Adams "was seemingly anxious to impress upon me that he had made this provision and conveyance to his wife as an evidence of his solicitude and disposition as providing for her against future accidents; and he repeated to me that in this conveyance he had appointed or made John A. Appleton, of the firm of D. Appleton & Co. of New York, trustee of this property." ( )

At this conversation "the plaintiff was present." (*Id.*, *Ib.*)

† The decree, in accordance with the averments of the libel, is rendered "*on account of the adultery*" of the libellee. (*Rec.*, p. 37.)

minor children * being awarded to the libellant, but no decree for alimony being sought or granted in her favor.

"I did not apply for alimony," says Mrs. Adams, "because I thought the house was my own, and I thought that would be sufficient for my support." (*Id.*, p. 27.) Such also was the opinion of her counsel after an examination of the deed. (*Id.*, *Ib.*)

In the month of October following an arrangment was made (through the intervention of Edwin DeLeon) between Mr. Adams and the appellee, whereby the latter was to receive from the former, for the support of herself and the said minor children, a certain monthly "*stipend*," or allowance, "*while she refrained from instituting a suit*" for the recovery of the property in question.

DeLeon, says Mrs. Adams, informed her late husband that he, DeLeon, "would do all he could to preserve friendly relations between Mr. Adams and myself in regard to the house, but that receiving this stipend did not do away with my right to the house, or my intention of at any time commencing suit for it." (*Ib.*, p. 28. †)

Her right of suit, says Edwin DeLeon, "she expressly reserved, as I did also in my conversation with Mr. Adams." (*Ib.*, p. 19.‡)

He wishes it "to be distinctly understood" that he never, directly or indirectly, doubted or waived "the right of his sister to reclaim the property whenever she chose to do so." His purpose was "simply to give time for an amicable arrangement which would put her in possession of that

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* In 1872 Mrs. Adams testified that they were "a boy fifteen years old, and a girl eighteen." (*Id.*, p. 27.")

† And on cross-examination:

"Question. Did you consent to the arrangement your brother made with Mr. Adams?

"Answer. I said to my brother I would consent until I was ready to begin the suit, and then I would begin it." (Rec., p. 28.)

‡ He states further, in regard to the adjustment of the bill on London: "One of the chief reasons which induced me to be so patient, both in reclaiming the principal and submitting to the final settlement, was the belief that the house was the property of his (Adams') wife and children." (*Ib.*, p. —.)

property;" and this he "always stated to Mr. Adams." (*Ib.*, pp. 23, 25.)

This allowance, besides being irregularly paid, (*Ib.*, pp. 19, 28, 31–32,) proving insufficient for the support of the appellee and her children, she now filed her bill in equity, seeking an establishment in her favor of the trusts declared in the conveyance of August 13, 1861. *

To this bill answers were filed by Appleton, one of the appellants, (*Ib.*, p. 11,) denying his acceptance of the trust, or his knowledge of the "existence of such deed until the year 1870," when he was informed of the same by the appellee, "*whereupon*" he declined to act as trustee in the premises, and by Mr. Adams, the other of the appellants, (*Ib.*, pp. 8–10,) admitting that "he *placed said deed on record*," and that "he *caused said deed to be made and partially executed*," but denying its *execution or delivery*, or his *intention to make a settlement* upon Mrs. Adams, affirming that "*not wishing the title to remain longer in said Stone*, and owing to the disturbed and revolutionary character of the times, and the threatened condition of this city, and other contingencies *growing out of the state of war then existing*," he had only partially executed the deed, so that it might, upon short notice, become effective by delivery; that he had since *continued* in possession, and had received the rents and profits of the estate, and had paid the taxes and insurance thereon; that the decree of divorce was not procured conformably to the laws of Massachusetts, but if otherwise, that the complainant *might there enforce her rights to alimony;* and that, to prevent any further or future litigation," the plaintiff and the respondent, in October, 1870, through the information of Edwin DeLeon, her brother, had entered into an agreement for the allowance to her by the respondent of a certain monthly sum of money for the support of herself and children, which agreement he, on his own part, had well performed.

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*Mrs. Adams says she was entirely destitute. "I raised money by putting my watch and a few other things in pawn." (*Ib.*, p. 31.)

Testimony in the cause was taken *by the complainant alone.* From such evidence the facts already mentioned were made to appear.

A decree was passed at the hearing, by the chancellor holding the special term of the court below, sustaining the validity of the trusts created in favor of the complainant by the deed of August 13, 1861, and appointing a new trustee in the place and stead of Appleton, with an order for an account of rents and profits from the filing of the bill.

Such decree having been affirmed, on appeal, in the general term in the forum below, the cause, by further appeal, was brought to this court.

Points and Authorities.

Equity will enforce a use or trust annexed to a *perfect gift*, however gratuitous, and will compel performance of *incomplete* engagements, when not made in favor of mere volunteers.

Coleman v. *Sorrel*, 1 Ves., 50; 3 Bro. C. C. 12; *Ellison* v. *Ellison*, 6 Ves., 656; *Pulvertoft* v. *Pulvertoft*, 18 *Id.*, 98; *Garrard* v. *Lord Lauderdale*, 2 Russ. & My., 450; *Bell* v. *Cureton*, 2 My. & R., 503–408; 1 Sand U. & T., 370. (2d Am. ed.) See *Neves* v. *Scott*, 9 How., 210, 211; S. C., 13 *Id.* 271.

I. There was such delivery of the instrument as rendered the conveyance complete.

1. It was thought in 1832 that, as between grantor and grantee, "proof of sealing and delivery would alone be required, *and the acknowledgment of the fact by the party* would be sufficient proof of it."

Lessee of Sicard v. *Davis et al.*, 6 Peters, 136.

It is at least "*cogent evidence*" of delivery.

2 Phill. Ev., pp. 555–556.

1 Saund. Pl. and Ev., 423.

2. "A deed lodged with the clerk of a court or register, for the use of the grantee, is clearly a good delivery, if the grantee afterwards assent."

2 Rob. Plead., 10; *Cloud* v. *Calhoun*, 10 Rich. Eq., 362. See *Parmelee* v. *Simpson*, 5 Wall., 81.

Whether the law *requires registration or not.*

[1 Saund. Pl. & Ev., 443, (Am. Ed., 1837.) *Stewart* v. *Redditt*, 3d Mo., 79.]

Registration is *prima facie* evidence of delivery.

The Lady Superior v. *McNamara*, 3 Barb. Ch., 378; *Rathbun* v. *Rathbun*, 6 Barb., 98; *Tate* v. *Tate*, 1 Dev. Eq., 26; *Boody* v. *Davis*, 20 N. H., 140; *Hedge* v. *Drew*, 12 Pick., 141; *Cooper* v. *Jackson*, 4 Wis., 537; *Carver* v. *Jackson*, 4 Pet., 82; *Thompson* v. *Wheeler*, 16 *Id.*, 106; *Younge* v. *Guilbeau*, 3 Wall., 636.

Even a certified copy of an instrument required by law to be recorded is in this District *prima facie* evidence of every circumstance necessary to give it validity.

Dick et al. v. *Balch et al.* 8 Pet., 30; *Barry* v. *Hoffman*, 6 Mo., 78; *Warner* v. *Hardy*, *Id.*, 525–527; *Hutchins* v. *Dixon*, 11 *Id.*, 29, 41; *Phelps* v. *Phelps*, 17 *Id.*, 120–133; *Lippoc* v. *Nat. Union Bk.*, 32 *Id.*, 136, 145.

Registration is considered as standing in the place of livery of seisin.

Lessee of Patton v. *Brown*, 1 Cooke, (Tenn.)

And there can be but *one delivery*. If the first be good, a second will be void.

Verplank v. *Story*, 12 Johns., 584.

3. No particular form of delivery is required.

2 Stark. Ev., sec. 271; 2 Rob. Pract., 9.

It may be by words only.

4 Com. Dig., tit. *Fait*, A. 3; 2 Tho. Co. Litt., 235.

Acts evincing an intention to deliver are sufficient.

Goodrich v. *Walker*, 1 Johns. Cas., 250; 2 Phil. Ev., p. 551, (Am. ed., 1868.)

The deed would be treated as complete if the parties "came together for that pnrpose, and performed all that was requisite for the purpose of effecting it, *except an actual delivery.*

Cro. Eliz., 7; 1 Leon, 140.

It is seldom that the grantee is able to show "a distinct formal act of delivery."

2 Phill. Ev., 554.

4. The presumption of an intention to deliver is confirmed.

(*a*) By the representations made by Mr. Adams to Edwin D. Leon, in connection with the loan of £1,200.

(*b*) By declarations of the grantor subsequent to the conveyance.

Tipton v. *Ross*, 10 Ohio, 273.

(*c*) By suffering the deed to remain unrevoked long after the occasion now assigned for its execution had ceased to exist.

5. If there was any intention of *escrow*, it should have been announced at the time of the acknowledgment or of the record of the instrument.

Souverbye v. *Arden*, 1 Johns. Ch., 240.

The justices within this District possess "no authority to take the acknowledgment of a deed to be recorded for safe keeping."

Carroll v. *Norwood*, 1 G. & J., 167.

The delivery can now be disputed "with no such plausibility as to require extended discussion." *Cloud* v. *Calhoun*, 10 Rich. Eq., 362.

6. The *receipt of the rents and profits* by the husband, and

his *retention of the deed*, were consistent with the title of the appellee, *in view of the relations existing between the parties.*

The *first* occurred in *Souverbye* v. *Arden*, (*supra*,) and the *second*, even when occurring beyond the marital connection, *never invalidates the deed or revokes the trust.*

Clavering v. *Clavering*, 2 Vom., 473, In Ho. L. 7, Bro. P. C., 410. (2d edition.)
Barlow v. *Hineage*, Prac. in Ch., 211.
Naldred v. *Gilham*, 1 P. Wms., 577.
Sear v. *Ashwell*, 3 Swanst, 411.
Worrall v. *Jacob*, 3 Mer., 256, 271.
Exton v. *Scott*, 6 Sim., 31; 9 Cons. Eng. Ch., 155.
Jones v. *Jones*, 6 Conn., 111.
Souverbye v. *Arden*, recognized in—
Bunn v. *Winthrop*, 1 Johns. Ch., 329.
Grugeon v. *Guerrard*, 4 You. & Coll., 131.
Dillon v. *Coppin*, 4 My. & Cr., 660.
Hall v. *Palmer*, 13 Law J., 67.
Macnaghton's Sel. Case Eq., secs. 207, 211, pp. 177, 180; 2 Rob. Pract., 10. See *Hall* v. *Hall*, L. R., 8 Ch., 430.

It seems to *Bailey*, *J.*, "that where an instrument is formally sealed and delivered, and there is nothing to qualify the delivery but the keeping the deed in the hands of the executing party, nothing to show that he did not intend it to operate immediately that it is a valid and effectual deed; and that delivery to the party who is to take by it, or to any person for his use, is not essential."

Garnons v. *Knight*, 5 Barn. & Cress., 671; 12 E. C. L., 356, 357.

"If both parties be present, and the usual formalities of execution take place, and the contract is to all appearances consummated, without any conditions or qualifications annexed, it is a complete and valid deed, notwithstanding it be left in the custody of the grantor." 4 Kent's Comm., 455, 456.

"No doubt," says *Wigram, V. C.*, "the intention of the parties is often disappointed by holding them to be bound by deeds which they have kept back, *but such is unquestionably the law.*" *Fletcher* v. *Fletcher*, 4 How., 79, 80.

7. *Here*, the husband may be regarded as having, *in the one character of grantor, delivered the deed to himself; in the other character, of agent or trustee of the wife.*

Her omission during the coverture to demand the deed, or to require an account of the rents and profits, was but the natural result of "*that delicate forbearance,*" upon which "the sweetness of social intercourse, the harmony of society, and the happiness of families" are said to repose.

Sexton v. *Wheaton*, 8 Wheat., 239.

The case is stronger than that of a parent who, after executing a voluntary bond to his daughter, says, "*Here is your bond, what shall I do with it?*" adding "*I will take care of it for you,*" and where the delivery is good, though the child never come into possession of the instrument. *Folly* v. *Varleigh*, 4 Halst., 153.

See 2 Phil. Ev., 556.

Again, *Mr. Adams, as well as the appellee, was a beneficiary under the express terms of the deed.* It was not necessary to convene the *cestui que trust.* A delivery to one was a delivery to all. *Moss* v. *Riddle*, 5 Cr., 357. Adams may then be considered *as having, as grantor, delivered the deed to himself as one of its beneficiaries, and as thereafter holding the instrument for the common benefit of the trust in all its limitations.*

II. The appellee is not a mere volunteer.

1. Deeds may be made upon *good* consideration, as in favor of a wife and children, for whom the grantor is under a natural and moral obligation to provide.

2 Story's Eq. Jur., § 987.

Jones v. *Jones*, 6 Conn., 111, 113.

2. It is true that, two days after he had received a conveyance for the property in question, Mr. Adams, in con-

junction with his wife, conveyed that property to *Stone*, in trust to secure a certain balance of the purchase money, and that prior to the execution of the conveyance in trust to *Appleton*, in which Stone united, the latter had not generally released the legal title conveyed under the deed to secure the purchase money, though the debt had, in fact, been previously fully discharged.

There being no default in payment, and no change in the possession of the estate, the discharge of the debt rendered the trust *functus officio*, and *no reconveyance from Stone was requisite to restore the legal title to his grantor.*

4 Kent's Comm., 193, 194.

Doe v. *Considine*, 6 Wall., 471.

The wife, therefore, was possessed of *a contingent dower interest in the property.*

Her surrender of this interest, in order to carry out the purposes of the conveyance to Appleton, rendered her *a purchaser.*

Lavender v. *Blackstone*, 2 Lev., 146.

Scott v. *Bell*, *Id.*, 70, 71; 1 Tho. Co. Litt., 237, n. *o.*

Atherley Mar. Sel., 161–164.

3. Without payment by Mr. Adams of the debt secured by the deed to Stone, the wife's right of participation in the surplus, over and above the debt, in case of a sale, and her right of redemption, would have formed the subject of *property* appreciable in equity.

So that, conceding the legal title to have been outstanding in Stone at the time of the conveyance to Appleton, the appellee, by uniting in that conveyance, must still have surrendered a right to which she was entitled; and while the *delivery on the part of Stone* (which is not brought into question) operated as a valid transfer *of the legal title*, the equitable estate remaining in Mr. Adams might well be assigned in trust, *without any of the formalities of delivery.*

Beatley v. *Mackay*, 15 Eng. L. and Eq., 66.

4. But it is contended that no trust was created, *because Appleton, the trustee, never accepted the trust.*

But (*a*) All deeds devest the estate from the grantor and transfer it to the grantee, though in his absence, and without notice to him, until her disagreement appears.

Thompson v. *Leach*, 2 Vent., 201; 4 Cruise, tit. 32, c. 1, sec. 2420, p. 12.

Skipwith v. *Cunningham*, 8 Leigh, 282; Lewin on Trusts, 152, (4th edit.)

The legal estate vesting, *eo instanti*, in the trustee, he may, *to the extent of relieving himself*, disclaim it *ab initio;* but the doctrine of relation cannot apply so as to defeat the conveyance *in limine*, as a transfer of an equitable interest to a third person.

McLean v. *Nelson*, 1 Jones, (Law,) 396.

Dawson v. *Dawson*, 1 Rice Eq., 258.

King v. *Donnelly*, 5 Paige, 46; Lewin on Trusts, 152; Adams Eq., p. 164, § 3.

Here Appleton asserts that he was ignorant of the conveyance in question, until informed of its existence by the appellee in 1870, "*whereupon*" he "declined to act as trustee."

(*b*) No particular form of words is necessary to create a trust. It is sufficient that an intention to create the trust can be duly ascertained from some written evidence.

4 Kent's Comm., 305; Story's Eq. Jur., § 972; *Moran* v. *Hays*, 1 Johns. Ch., 343.

"The trust is regarded as the land, and the declaration of trust is the disposition of the land."

4 Kent's Comm., 306; See *Andrews* v. *Holson*, 23 Ala., 219; 1 Lead. Cas. Eq., 325; *Croxall* v. *Shererd*, 5 Wall., 281.

(*c*) A trust never fails for the want of a trustee.

"He may refuse to execute the trust, but in that case *a court of chancery will execute it for him;* and the assent of

the *cestui que trust* may be given at any time after the deed is made, and will always be presumed in the absence of proof to the contrary."

Field v. *Arrowsmith*, 3 Humph., (Tenn.,) 442; *McLean* v. *Nelson*, 1 Jones, (Law,) 396; *Dawson* v. *Dawson*, 1 Rice Eq., 258; 1 Cru. Dig., tit. 12, ch. 4, sec. 59, p. 539; *Read* v. *Robinson*, 6 Watts & Serg., 329; *Freeman & Co.* v. *Fisher*, 4 Col., 631; *Beaswell* v. *Donas*, 11 Fla., 62; See *Saunders* v. *Harris*, 1 Head, (Tenn.,) 206.

Though there be a devise in trust to a corporation incapable of taking under the will, "yet *the trust* is sufficiently created to fasten itself upon *any estate the law may raise.*"

Vidal v. *Girard's Ex'rs*, 2 How., 188; See Story's Eq. Jur., § 1380; *Neves* v. *Scott*, 9 How., 211; S. C., 13 *Id.*, 273.

This rule applies to the trustee, even when "*it may be justly presumed that he never heard of the deed.*"

Cloud v. *Calhoun*, 10 Rich. Eq., 362.

III. Confiding in the validity of the settlement and the faith of her husband, the appellee first parted with her contingent dower interest in the property, and afterwards, upon the advice of counsel, waived even her right to alimony in the Massachusetts court.

Under such circumstances appellant, Adams, is estopped from denying the efficacy of the settlement.

Story's Eq. Jur., § 385; *Carr* v. *Wallace*, 7 Watts, 400. *Bank U. S.* v. *Lee*, 13 Pet., 107; *Swain* v. *Seamans*, 9 Wall., 254, 274.

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2 Wallace 34